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No. _____

In The

Supreme Court of the United States

October Term, 1992

HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. WHETHER THE PETITIONERS HAVE BEEN DENIED DUE PROCESS OF LAW BECAUSE THE COURT OF APPEALS IMPROPERLY GAVE FULL FAITH AND CREDIT TO A CONSTITUTIONALLY INFIRM JUDGMENT OF THE ALABAMA SUPREME COURT AND FAILED TO CONDUCT AN INDEPENDENT INQUIRY INTO THE ADEQUACY OF THE ALABAMA JUDGMENT.

2. WHETHER THE COPYRIGHT ACT THREE-YEAR STATUTE OF LIMITATIONS, 17 U.S.C. SECTION 507(b), OPERATES AS A BAR TO RESPONDENT'S UNTIMELY CLAIM OF OWNERSHIP IN A SHARE OF COPYRIGHT RENEWALS.

3(A). WHETHER THE UNIFORM FEDERAL DEFINITION OF "CHILDREN" ADOPTED BY CONGRESS AS SECTION 101 OF THE 1976 COPYRIGHT ACT APPLIES TO COPYRIGHT RENEWALS UNDER THAT ACT.

3(B). WHETHER, IN LIGHT OF THE POLICY OF FEDERAL COPYRIGHT LAW TO PROVIDE SUPPORT FOR AN AUTHOR AND THE AUTHOR'S DEPENDENTS, BIOLOGICAL OFFSPRING OF THE AUTHOR WHO ARE ADOPTED BY PERSONS OTHER THAN THE AUTHOR ("ADOPTED OUT") ARE "CHILDREN" AS DEFINED BY SECTION 101 OF THE 1976 COPYRIGHT ACT.

II. PARTIES TO THE PROCEEDINGS

The parties to the proceedings as they appeared below are set forth in the caption hereof. However, since the commencement of this action Wesley Rose and Roy Acuff have passed away, and certain of the Petitioners have undergone corporate changes set forth below. In accordance with Supreme Court Rule 29.1, the parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of the corporate Petitioners were listed in Petitioner's Application for Extension of Time, No. A-453, to which this Court is respectfully referred.

Subsequent to the filing of this action, Petitioner Acuff-Rose-Opryland Music, Inc. changed its name to Acuff-Rose Music, Inc. and Petitioner Milene-Opryland Music, Inc. changed its name to Milene Music, Inc. Petitioners Fred Rose Music, Inc. and Milene Music, Inc. have been dissolved and their assets distributed to the respective Estates of Wesley H. Rose and Roy Acuff.

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HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition this court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, contained in its opinion decided July 13, 1992, in the matter of *Cathy Yvonne Stone v. Hank Williams, Jr., et al,* No. 91-7706.

IV. JUDGMENTS BELOW

The judgment and opinion in the matter of *Cathy Yvonne Stone v. Hank Williams, Jr., et al.,* Docket No. 91-7706, was entered by the United States Court of

Appeals for the Second Circuit on July 13, 1992, and is reported at 970 F.2d 1043 (2d Cir. 1992). A copy of the judgment and opinion is attached hereto as Appendix A-1. (The Appendix shall be referred to as "App."). The opinion and order of the United States District Court dated June 12, 1991, which was reversed by the above, is attached hereto as App. B-1.

V. JURISDICTION

Petitioners seek review of the opinion of the United States Court of Appeals for the Second Circuit entered on July 13, 1992, in the case of *Cathy Yvonne Stone v. Hank Williams, Jr., et al.*, Docket No. 91-7706. An order denying Petitioners' Motion for Rehearing and Suggestion for Rehearing In Banc was entered by the Second Circuit on September 18, 1992. (App. A-2). By order dated December 4, 1992, this Court granted an extension of time within which to file this Petition for Writ of Certiorari to and including January 31, 1993. (App. F-1) Jurisdiction to review the judgment of the United States Court of Appeals for the Second Circuit, dated July 13, 1992, by writ of certiorari is conferred upon this Court by 28 U.S.C. § 1254(1).

VI. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. Art. IV, Section 1

> "**Full faith and credit to records and judicial proceedings of states.** – Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

17 U.S.C. Section 101

" . . . A person's 'children' are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person . . . "

17 U.S.C. Section 304(a)

"**(a) Copyrights in Their First Term on January 1, 1978.** – Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for twenty-eight years from the date it was originally secured: *Provided* . . . That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedia or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his or her next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright[.] . . . "

17 U.S.C. Section 507(b)

"**(b) Civil Actions.** – No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued."

28 U.S.C. Section 1738

"[J]udicial proceedings of any court of any . . . State . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of [the] State . . . from which they are taken."

VII. STATEMENT OF THE CASE

A. STATEMENT OF MATERIAL FACTS

This is an action for declaratory judgment and ancillary relief with respect to Respondent's alleged entitlement to an interest in the renewal term of copyright in musical compositions written by Hiriam "Hank" Williams ("Williams, Sr."). Respondent bases her entitlement upon her alleged status as the illegitimate daughter of Williams, Sr. who died on January 1, 1953, five days before Respondent's birth. (App. at E-1.2 and 1.3).

Williams, Sr. composed more than one hundred (100) musical compositions (the "Works") prior to his death. Williams, Sr. assigned the Works and the copyrights therein to Acuff-Rose Publications, the predecessor to Petitioners Acuff-Rose-Opryland Music, Inc. and Milene-Opryland Music, Inc. (the "Opryland Petitioners"), Estate of Wesley H. Rose, Estate of Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc. (the "Acufff-Rose Petitioners"). (App. at E-1.3). Petitioner Fred Rose Music, Inc. acquired the interest of Williams, Sr.'s then minor child, Petitioner Randall Hank Williams, Jr. ("Williams, Jr."), in the renewal term rights in the Works. Billie Jean Williams Berlin ("Berlin") is the widow of Williams, Sr. Aberbach Enterprises, Ltd. ("Aberbach") is the assignee of Berlin's interest in the renewal term rights in the Works. (App. at E-1.3). The renewal term of copyright in the Works has been duly obtained by the Acuff-Rose Petitioners and Aberbach as the assignees of Williams, Jr. and Berlin.

Respondent was born on January 6, 1953, in Montgomery, Alabama, to Bobbie W. Jett, an unmarried woman. (App. at E-1.5). Respondent was first adopted in Montgomery by Williams, Sr.'s mother, Mrs. Lillian Stone and her husband, and following Mrs. Stone's death in 1955, was subsequently adopted and raised by George and Mary Louise Deupree in Mobile, Alabama. (App. at E-1.5).

In 1967, proceedings were commenced in the Circuit Court of Montgomery County in the Williams, Jr. guardianship matter challenging a 1963 transfer of renewal term

rights to certain of the Petitioners ("1967-68 proceedings"). Respondent's existence was disclosed to the court. The issue of any legal rights which she might have as a possible heir of Williams, Sr.'s estate and to the renewal term of copyright in the Works was litigated by her guardian ad litem. (App. K-1 and L-1).

After lengthy evidentiary proceedings, the trial court found that (1) Respondent had no right of inheritance from Williams, Sr. under copyright law, (2) Respondent was not an heir of Williams, Sr. and (3) Williams, Jr. was the sole heir. (App. at L-1.5 and K-1.3).

On Respondent's twenty-first birthday in January 1974, Mrs. Deupree informed her that Williams, Sr. could be her biological father, and that as an adopted child she was entitled to certain funds from the Estate of Lillian Stone. (App. at E-1.7). Respondent next sought information about Williams, Sr., and read a book on his life which included references to the 1967-68 proceedings, and to an illegitimate child, allegedly fathered by Williams, Sr. Respondent believed that she might be that child. (App. at E-1.8). Despite this, Respondent made no effort to prove or investigate her paternity until years later. (App. at E-1.8).

In 1979, Respondent contacted the Alabama Department of Pensions and Security regarding her biological mother. Respondent told the Department (1) that she knew of her identity, (2) that she had read newspaper clippings that mentioned her in connection with Williams, Sr. and the 1967-68 proceedings and, significantly, (3) that she did not want anyone ever to link her with Williams, Sr. In December 1980, Respondent's adoptive father gave her additional information relative to her biological parentage. (App. at D-1.6 and E-1.9).

B. STATEMENT OF THE PROCEEDINGS

Respondent filed this action with the United States District Court for the Southern District of New York on September 12, 1985. The Third Amended Complaint alleges two (2) claims for relief. (App. H-1). The first claim against all Petitioners avers that Respondent is the natural daughter of Williams, Sr. and, as such, is the owner of not less than an undivided one-third (1/3) interest in the renewal term rights in the Works. Respondent also seeks an accounting and other relief. (App. at H-1.19-1.21). Respondent's second claim alleges a conspiracy to defraud Respondent and a breach of fiduciary duty against the Acuff-Rose Petitioners only, seeking compensatory and exemplary damages. Petitioner Williams, Jr. and Aberbach were not named as parties to the second claim. (App. at H-1.21-1.22).

After exhaustive discovery, the Petitioners submitted a joint Motion for Summary Judgment based on various grounds. For purposes of such motion only, it was assumed *arguendo* that Respondent was the biological child of Williams, Sr. Respondent also moved for partial summary judgment on her claim that she is Williams, Sr.'s natural daughter and thereby entitled to an undivided one-third interest in all renewal rights in the Works.

The District Court granted the Petitioners' joint Motion for Summary Judgment and dismissed the Third Amended Complaint in its entirety, based upon the doctrine of laches, holding that Respondent had unreasonably delayed in asserting her claims and that Petitioners had been materially prejudiced thereby. (App. at E-1.16-1.18).

Respondent appealed the District Court's decision to the United States Court of Appeals for the Second Circuit. Pursuant to an opinion dated April 21, 1989, the Second Circuit affirmed. (App. at D-1). Respondent's Petition for Rehearing was denied. (App. G-2 and G-3). Respondent subsequently filed a Motion for Recall of Mandate and

Order Granting Leave to File Petition for Rehearing and Rehearing in Banc dated July 31, 1989. (App. G-4). The Motion for Recall was granted by the Second Circuit on August 24, 1989 (App. G-5), and Respondent submitted her second Petition for Rehearing on September 7, 1989. (App. G-6).

On December 5, 1989, based upon intervening decisions of the Alabama Supreme Court, discussed below, the Second Circuit granted Respondent's request for a rehearing; conducted the same without notice to, or oral argument by, Petitioners; vacated its earlier affirming decision; reversed the District Court's dismissal of Respondent's complaint and remanded this action to the District Court for further proceedings. (App. C-1). Petitioners filed a Petition for Writ of Certiorari in April 1990, which was denied by this Court on June 18, 1990.

Petitioners again submitted a joint Motion for Summary Judgment in the District Court based on various grounds, still assuming, for argument only, Respondent to be the biological child of Williams, Sr. The District Court granted the motion on June 12, 1991, based on the three-year statute of limitations of the Copyright Act. The District Court found that Respondent's claims accrued at least as early as October 17, 1979. (App. B-1.20).

Respondent appealed the District Court's decision to the United States Court of Appeals for the Second Circuit. Pursuant to an opinion dated July 13, 1992, the same panel of the Second Circuit, after denying oral argument, reversed and remanded. (App. A-1). Petitioners' Motion for Rehearing was denied by the Second Circuit on September 18, 1992. (App. A-2). On December 4, 1992, this Court granted Petitioners an extension of time to file this Petition through January 31, 1993. (App. F-1).

C. STATEMENT OF RELATED PROCEEDINGS

Petitioners Williams, Jr., Acuff and Rose ("Alabama Petitioners") and Respondent are also parties to a related

estate proceeding in the state courts of Alabama[1] that has resulted in decisions by the Supreme Court of Alabama in *Stone v. Gulf American Fire and Casualty Co., et al.*, Case No. 87-269, dated July 5, 1989, and "On Application for Rehearing," dated November 9, 1989, (the "Alabama Decisions"). (App. I-1 and I-2). Although the Alabama Decisions should be irrelevant to this action regarding an entitlement to an interest in renewal copyrights,[2] these decisions are so interrelated with the actions of the Second Circuit that analysis of their decisions will be aided by a succinct statement of the Alabama proceedings.

The Alabama Decisions arose from an action instituted (in response to Respondent's demand letter dated August 5, 1985) by Alabama Petitioners against Respondent regarding her entitlement to share in the assets and proceeds of the estate of Williams, Sr. (App. at J-1.2). Respondent counterclaimed for a determination of her status as a child of Williams, Sr. (App. at J-1.3) and filed a third party indemnity action against the administrators of the Williams, Sr. estate, the attorneys for the estate and the insurance company which issued the administrators' bonds. (App. at J-1.3).

The Alabama Petitioners moved for summary judgment on the initial action and Respondent's counterclaim. The third party defendants also moved for summary judgment on the indemnity action. The trial court granted all motions for summary judgment but held that, although not entitled to share in the estate, Respondent was the illegitimate daughter of Williams, Sr. (App. at J-1.20 and J-2.3).

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[1] Neither the Opryland Petitioners nor Aberbach were or are parties to such action.

[2] Since both Williams, Jr. and Berlin are still living, the renewal copyrights of Williams, Sr. never became an asset of the Estate of Williams, Sr. or subject to the jurisdiction of the Alabama courts. *See Frederick Music Co. v. Sickler*, 708 F. Supp. 587 (S.D.N.Y. 1989).

Respondent did not appeal the granting of summary judgment on the initial action or her counterclaim, the only actions to which any Petitioners herein were parties, and such judgments became final. Respondent elected to appeal *only* the granting of summary judgment on her third party indemnity action. It is the appeal on that action, in which none of the Petitioners was a party, that gave rise to the Alabama Decisions.

Despite the uncontroverted fact that none of the Petitioners was a party to the third party action or privy with any party thereto, the Alabama Decisions have effectively deprived Petitioners of vested property rights, including deprivation of ongoing renewal term copyright royalties. (App. at I-1.55). Petitioner Williams, Jr. submitted, on or about March 30, 1990, a Petition for Writ of Certiorari to this Court with respect to the Alabama Decisions, which this Court denied.

VIII. REASONS FOR GRANTING THE WRIT

A. THE PETITIONERS HAVE BEEN DENIED DUE PROCESS OF LAW BECAUSE THE COURT OF APPEALS IMPROPERLY GAVE FULL FAITH AND CREDIT TO A CONSTITUTIONALLY INFIRM JUDGMENT OF THE ALABAMA SUPREME COURT AND FAILED TO CONDUCT AN INDEPENDENT INQUIRY INTO THE ADEQUACY OF THE ALABAMA JUDGMENT.

1. The Alabama Supreme Court Judgment Does Not Bind Petitioners Because Petitioners Were Not Parties to the Proceedings.

The Second Circuit Court of Appeals improperly gave full faith and credit to the judgment of the Alabama Supreme Court because Petitioners were not parties to that judgment. Both state and federal courts are required to give "full faith and credit . . . to the . . . judicial proceedings of every other state." U.S. Const. Art. IV, Section 1;

28 U.S.C. Section 1738. Full faith and credit is not given, however, to constitutionally infirm judgments. *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 452 (1982); *see also Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8, 15 (1907) ("judicial proceedings . . . wanting in the due process of law" not entitled to full faith and credit). Any other rule would be unacceptable, since it would require the enforcement of judgments where the state court "failed to follow the procedural requirements of the Due Process Clause." *Underwriters Nat'l Assur. Co. v. North Carolina Life & Accidental & Health Ins. Guar. Ass'n*, 455 U.S. 691, 719 (1982) (White, J., concurring); *see also Adams v. Saenger*, 303 U.S. 59, 63 (1938). One of the most elementary and longstanding due process requirements is that "a person cannot be deprived of his legal rights in a proceeding to which he is not a party." *Martin v. Wilks*, 490 U.S. 755, 759 (1989); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969); *Hansberry v. Lee*, 311 U.S. 32, 40 (1940); *Pennoyer v. Neff*, 95 U.S. 714, 732-33 (1877). "A judgment entered in such circumstances is not entitled to the full faith and credit which the Constitution and statutes of the United States prescribe." *Hansberry*, 311 U.S. at 40.

Petitioner Williams, Jr. sought leave to appear to present his claims and defenses, but the Alabama Supreme Court refused to allow him to appear and argue his case. (App. at I-2.12). Instead, the court pronounced that it had "jurisdiction" over the matter. *See* App. I-2. This is precisely the type of "proceeding deemed an illegitimate assumption of power, and resisted as mere abuse." *D'Arcy v. Ketchum*, 52 U.S. (11 How.) 165, 174 (1850); *Hansberry*, 311 U.S. at 40-41.

The Opryland Petitioners were not parties to any phase of the Alabama proceedings and were not parties to the Alabama Supreme Court proceeding that adversely affected Petitioners' property rights by adjudicating the

issue of heirship. The Alabama Supreme Court adjudicated numerous important issues of federal and state law in resolving the question of heirship. No notice was given to Williams, Jr. that his property interests were at risk, and he was never given the opportunity to be heard. Only *after* the Alabama Supreme Court remanded the case to the trial court was Williams, Jr. made a party to that case.

The Court of Appeals agreed that Petitioners were not parties to the Alabama proceeding, but nonetheless held that Petitioners were bound as non-parties for several reasons. The Court of Appeals held that Williams, Jr. was bound because the Alabama Supreme Court found that his views and arguments were adequately considered and presented. *See* App. A-1.29-1.32. The court of Appeals held that the remaining Petitioners were bound because they were in privity with Williams, Jr. *See* App. A-1.33-1.37.

These holdings are inconsistent with this Court's decisions. This Court has recognized limited exceptions to the "party to the proceeding" rule. None of these recognized exceptions apply in this case.

First, Petitioners did not effectively control or participate in the proceeding before the Alabama Supreme Court. This Court has held that a non-party can be bound if he or she effectively controlled or participated in the proceeding, and thus had an opportunity to be heard on all claims and defenses. *See, e.g., Martin*, 490 U.S. at 762 n.2; *Montana v. United States*, 440 U.S. 147, 154 (1979); *Zenith Radio Corp.*, 395 U.S. at 110-111; *Souffront v. La Compagnie Des Sucreries*, 217 U.S. 475, 485, 487 (1910). This exception is applied sparingly. For example, in *Zenith Radio Corp. v. Hazeltine Research Inc.*, 395 U.S. 100 (1969), this Court, reversing the trial court, refused to bind a parent corporation to a judgment against the parent's subsidiary, despite the fact that employees of the parent

had been witnesses, lawyers of the parent had been present at trial, and the subsidiary had stipulated that the acts of the parent were to be attributed to the subsidiary. The Court concluded that the parent's involvement did not amount to "control [of] the litigation" which would be a basis for a biding judgment. *Id.* at 111.

Lower federal and state courts following these precedents have consistently ruled that only upon a clear showing of participation and control can non-parties be bound. *See, e.g., Liedel v. Juvenile Court*, 891 F.2d 1542, 1544 (11th Cir. 1990) (person testified, and fully briefed and argued issues in state courts and made a party before entry of judgment); *Ponderosa Dev. Corp. v. Bjordahl*, 787 F.2d 533, 536-37 (10th Cir. 1986) (witness in first case represented by same counsel not bound); *Freeman v. Lester Coggins Trucking, Inc.*, 771 F.2d 860, 864-65 (5th Cir. 1985) (family members related to plaintiff in first case and represented by same counsel not bound); *Bryson v. Guarantee Reserve Life Ins. Co.*, 520 F.2d 563, 567 (8th Cir. 1975) (witness to proceeding not bound); *TRW, Inc. v. Ellipse Corp.*, 495 F.2d 314, 318 (7th Cir. 1974) (amicus curiae not bound).

Second, the Opryland Petitioners were not in privity with any parties in the Alabama Supreme Court proceedings. This Court has held that a non-party may be bound when in privity or adequately represented in a class action. *See Martin*, 490 U.S. at 762 n.2; *Hansberry*, 311 U.S. at 40-41. The Court of Appeals appeared to use the privity exception to bind both Williams, Jr. and the remaining Petitioners to the Alabama Supreme Court judgment.

Williams, Jr. was not in privity with any party to the proceedings before the Alabama Supreme Court. The only parties were Respondent, the law firm, insurance companies and the administrators of the estate. Clearly they had interests directly adverse to Petitioner Williams, Jr. – Respondent for the obvious reason that she was trying to take Petitioner Williams, Jr.'s property, and

the administrators because it is Respondent's position that the administrators are liable for any fraud committed. In addition, the administrators do not share Williams, Jr.'s property interest in the estate. That Williams, Jr.'s views were not adequately presented is evidenced by the fact that no party to the Alabama Supreme Court proceeding raised any arguments in support of Petitioners. *See Hansberry*, 311 U.S. at 45 ("[A] selection of representatives for purposes of litigation, whose substantial interests are not necessarily or even probably the same as those whom they are deemed to represent, does not afford that protection to absent parties which due process requires.").

The fact that certain Petitioners litigated the paternity issue in the Alabama trial court also does not cause Petitioners to be bound by the Alabama Supreme Court judgment, as suggested by the Court of Appeals. *See* App. A-1.33-1.37. The trial in the Alabama Circuit Court on the paternity issue could not possibly suffice as a full and fair opportunity for the resolution of the separate and distinct heirship issues resolved by the Alabama Supreme Court. These issues were resolved for the first time in the case without Petitioners ever being represented.

The remaining Petitioners were not in privity with any of the parties to the proceedings before the Alabama Supreme Court or Williams, Jr. The property interests of the remaining Petitioners in the copyright renewals were not shared by either Respondent or the administrators of the estate. And while their copyright property interests are somewhat aligned with Williams, Jr.'s general estate property interests, these interests are not identical.

The Court of Appeals' errors cannot be saved by relying on the Alabama Supreme Court's conclusion that the *in rem* nature of the proceeding allowed it to exercise jurisdiction over absent parties. *See* App. A-1.29-1.31. This assertion of *in rem* cannot possibly survive scrutiny under this Court's cases. *See Tulsa Prof. Collection Serv. v.*

Pope, 485 U.S. 478, 485-88 (1988) (individual notice required before interest can be extinguished in probate proceeding); *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 312-13 (1950) (*in rem* classification cannot control question of whether state "procedure accords full opportunity to be heard"). *Cf. Shaffer v. Heitner*, 433 U.S. 186 (1977). Thus, Petitioners cannot be bound merely because the court asserted that the action was *in rem*.

The effect of the Court of Appeals decision should not be underestimated. The decision creates a huge loophole in the general rule that only parties to a case are bound by the judgment. With the adoption of liberal joinder rules and complex multi-party, institutional litigation, there is enormous temptation to resolve all matters in one proceeding, even when all interested parties are not present. Despite these pressures, this Court and the lower courts have adhered to strict limits on enforcing judgments against non-parties. The Court of Appeals' novel and unprecedented departure from these principles warrants review by this Court.

2. The Court of Appeals Failed to Conduct an Independent Inquiry Into the Adequacy of the Alabama Supreme Court Judgment.

The Court of Appeals totally failed to inquire into whether Williams, Jr.'s views were fully and fairly heard. Under the Full Faith and Credit Clause, the enforcing court has the obligation to inquire if in fact the non-parties' views were fully and fairly heard. This Court has consistently held that a judgment is not entitled to full faith and credit if the person had no full and fair opportunity to raise claims and defenses. *See Kremer*, 456 U.S. at 482 & n.24 ("The Court's decisions enforcing the Full Faith and Credit Clause of the Constitution . . . also suggest that what a full and fair opportunity to litigate entails is the procedural requirement of due process.");

Durfee v. Duke, 375 U.S. 106, 114 (1963) (judgment entitled to full faith and credit "[a]fter a party has his day in court, with opportunity to present evidence"); *Hansberry*, 311 U.S. at 40 ("notice and opportunity to be heard . . . are requisite to the due process which the Constitution prescribes").

The Court of Appeals failed to follow these precedents, and concluded only that the Alabama Supreme Court *stated* that Petitioners' views were considered and presented, and that as the enforcing court the Court of Appeals was not free to "conclude otherwise." App. at A-1.30.

This reasoning of the Court of Appeals removes the Due Process Clause as any limit on a state court rendering binding judgments. The Court of Appeals concluded that so long as the rendering court (here, the Alabama Supreme Court) states that a litigant had a full and fair opportunity, the enforcing court (here, the Court of Appeals) is bound to accept this conclusion. The flaw in this approach is plain. The approach gives the rendering court complete and ultimate power to control the enforceability of its judgment. By simply noting that a person's views were adequately considered, the decision is made immune from scrutiny in the enforcing court. This approach has been rejected by this Court on a number of occasions. *See Hansberry*, 311 U.S. at 40; *Blonder-Tongue Labs., Inc. v. University of Ill. Found.*, 402 U.S. 313, 329 (1971) ("[T]he requirement of determining whether the party against whom an estoppel is asserted had a full and fair opportunity to litigate is a most significant safeguard."); *Underwriters Nat'l Assurance Co.*, 455 U.S. at 706 (second court must undertake inquiry to see if questions fully and fairly litigated in first court); *Durfee*, 375 U.S. at 111; *Thompson v. Whitman*, 85 U.S. (18 Wall.) 457, 466 (1873) (jurisdiction of first court may be reviewed in enforcing court "notwithstanding the averments contained in the record of the judgment itself").

Before giving the Alabama decision full faith and credit, the Court of Appeals was obliged to review the fairness and adequacy of the state court proceedings. The District Court in this case did undertake this inquiry and had no difficulty concluding that the judgment was not entitled to full faith and credit. *See* App. B-1.11-1.14. The contrary ruling of this Court of Appeals can be explained only by abdication of its function under the Due Process Clause and its uncritical acceptance of the Alabama Supreme Court's recital.

The Court of Appeals also failed to conduct an inquiry into whether the Alabama Supreme Court's assertion of *in rem* jurisdiction over Petitioners was valid. An enforcing court has an obligation to inquire into the course of proceedings used to establish jurisdiction in the rendering court. *See Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939); *Underwriters Nat'l Assurance Co.*, 455 U.S. at 704 & n.10 (before a court is bound it must "inquire into the jurisdictional basis of the foreign court's decree"). The enforcing court is not bound to accept the rendering court's "purported" exercise of jurisdiction. Over one hundred years ago the Court cautioned:

> It appears . . . that this proposition assumes the very fact to be established, which is the only question in issue. For what purpose does the defendant question the jurisdiction of the court? Solely to show that its proceedings and judgment are void, and, therefore, the supposed record is, in truth, no record. . . . [I]f he cannot show, even against the pretended record, that fact, on the alleged ground of the uncontrollable verity of the record, he is deprived of his defence, [sic] by a process of reasoning that . . . is little less than sophistry. The plaintiffs, in effect, declare to the defendant – the paper declared on is a record, because it says

> you appeared; and you appeared, because the paper is a record. This is reasoning in a circle.

Harris v. Hardeman, 55 U.S. 334, 341 (1852). The Court has steadfastly adhered to this rule. *Williams v. North Carolina*, 325 U.S. 226, 230 (1945); *Chicago Life Ins. Co. v. Cherry*, 244 U.S. 25, 29 (1917); *Thompson*, 85 U.S. at 468.

Petitioner Williams, Jr. was never given any notice or opportunity to be heard on the jurisdictional grounds asserted by the Alabama Supreme Court. The state court "purported" to exercise jurisdiction and render judgment against a non-party who was never allowed to object to or be heard on the grounds for jurisdiction. Due process mandates, therefore, that the enforcing court give the hearing that was arbitrarily denied by the rendering court.[3]

The Court of Appeals' failure to inquire into Petitioners' right to be fully and fairly heard in the rendering court on the issue of jurisdiction is amplified by its more fundamental error in failing to inquire whether Petitioners were fully and fairly heard. The uncontroverted fact is that the Alabama Supreme Court never allowed Petitioners to be heard on numerous issues of federal and

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[3] Contrary to the Court of Appeals suggestion (App. A-1.32), Petitioner's full and fair opportunity to be heard was not satisfied by the availability of discretionary review to this Court. There is reason to believe that for purposes of certiorari the earlier Alabama judgment was not final. *See San Diego Gas & Elec. Co. v. Dan Diego*, 450 U.S. 621, 632-33 (1981); *NAACP v. Williams*, 359 U.S. 550 (1959). This Court has on numerous occasions canvassed the record of the rendering court to determine whether the full and fair opportunity test was met despite the fact that certiorari could have been sought in the first case. *See Kremer*, 456 U.S. at 483-84; *Montana*, 440 U.S. at 154-55, 163-64 (same). These are in accord with the over 100 year-old rule that the adequacy of the first proceeding may be "inquired into collaterally." *Harris*, 55 U.S. at 340.

state law. Clearly, a court departs from established principles when it not only gives full faith and credit to an *ex parte* determination of jurisdiction, but then uses that infirm jurisdictional ruling to give full faith and credit to a ruling on the merits for which a party was never given an opportunity to be heard. In such a case, review by this Court is warranted.

B. THE COPYRIGHT ACT THREE-YEAR STATE OF LIMITATIONS, 17 U.S.C. SECTION 507(B), OPERATES AS A BAR TO RESPONDENT'S UNTIMELY CLAIM OF OWNERSHIP IN A SHARE OF COPYRIGHT RENEWALS.

Respondent's first claim for relief is one arising under the copyright laws of the United States and, therefore, is governed by the Copyright Act statute of limitations, 17 U.S.C. Section 507(b), which provides:[4]

> (b) – Civil Actions. No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

The District Court found and the Court of Appeals concurred that Respondent "had notice of a potential claim by October of 1979." (App. at A-1.11 and B-1.17-1.18). Because the present action was filed by Respondent on September 12, 1985, a date more than three years after her claim accrued, Respondent's first claim for relief is barred.

Despite the clear language of Section 507(b), the Court of Appeals reversed the District Court's dismissal of Respondent's action. The Court of Appeals held that

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[4] Section 507(b) of the Copyright Act of 1976 is identical to Section 115(b) of the Copyright Act of 1947 except for a grammatical change. For convenience sake the copyright statute of limitations shall be referred to herein as Section 507(b) regardless of which Copyright Act may be applicable to the various renewals.

because Respondent's suit included claims for "relief" with regards to royalties received within three years of commencement of the suit, Respondent was not barred from attempting to establish an ownership interest in those royalties.

Petitioners agree with the Court of Appeals that an action for declaratory judgment is time barred only if a direct claim on the rights sought to be vindicated would be barred. *118 E. 60th Owners, Inc. v. Bonner Prop., Inc.*, 677 F.2d 200, 202 (2d Cir. 1982). If Respondent had merely sought a declaration that she had a right to a share of the renewal rights in the Works based on her status as a child of Williams, Sr., the Court of Appeals presumably would have held that her action was untimely under Section 507(b). Instead, however, the Court of Appeals improperly held that because Respondent's claim for relief was not time barred, then her action for declaration of her status also was not time barred.

The Court of Appeals artificially separated Respondent's claim into one for a declaration of her status as a "child" of Williams, Sr., and the other for relief seeking an accounting and damages based on that status. The Court of Appeals ignored that establishing ownership in a renewal interest is a fundamental element of Respondent's claims. Respondent must *first* establish her status before she has any right to bring an action against the Petitioners.

The Court of Appeals analogized Respondent's failure to establish her status to a mere "procedural requirement." Likening Respondent's failure to establish her status to a "technical" error, the Court of Appeals cited several cases holding that technical errors would not bar an otherwise proper action under the Copyright Act. (App. at A-1.13-1.14).

Petitioners agree that technical errors such as a delay in filing a deposit copy of a work or obtaining a certificate of registration should not bar claims for relief for

acts of infringement. In the cases cited by the Court of Appeals, however, status was not an issue or had appropriately been determined. Establishment of status is not a technical or procedural requirement for an infringement claim. Rather, as the District Court recognized, Respondent's ownership interest is the fundamental basis upon which her claim for relief is based. (App. at B-1.16).

If the decision of the Court of Appeals is permitted to stand, the law of the Second Circuit will be that a person with a claimed interest in renewal rights for a copyright may bring an action *at any time* during the life of the renewal interest. Although the Court of Appeals would limit the recovery in such an action, nothing in the court's opinion provides for any final resolution of ownership in renewal rights.

Respondent's "claim" is that she occupies the status of a child within the meaning of the Copyright Acts of 1947 and 1976 for purposes of an entitlement to an interest in the renewal term copyrights of the Works. Her remedy to establish that claim is the right to file an action to establish that status. *See Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945). It is this remedy which is barred by the statute of limitations. *Prather v. Neva Paperbacks, Inc.*, 446 F.2d 338, 340 (5th Cir. 1971).

It is Respondent's *claim* to occupy the status of one entitled to an interest in the renewal term copyrights of the Works that is the "basic nature" of her suit. *See Bonner Prop., Inc.*, 677 F.2d at 202. The various types of affirmative relief requested by Respondent do not change the claim which is the foundation for her request for such relief. "Limitations periods are applicable not to the form of relief but to the claim on which the relief is based." *Luckenbach S.S. Co. v. United States*, 312 F.2d 545, 548 (2d Cir. 1963). Thus, the statute of limitations began to run when Respondent knew or had reason to know of the injury resulting from actions inconsistent with her claim. *Cullen v. Margiotta*, 811 F.2d 698, 725 (2d Cir. 1987).

Respondent could have commenced her action based upon Section 24 of the Copyright Act of 1947 (the "Prior Act") or upon Section 304(a) of the Copyright Act of 1976 (the "Copyright Act") at the time that she knew or, in the exercise of reasonable diligence, should have known, the facts alleged to support her cause of action. *See Taylor v. Meirick*, 712 F.2d 1112 (7th Cir. 1983); *Carmichael v. Mills Music, Inc.*, 121 F. Supp. 43 (S.D.N.Y. 1954). The District Court held and the Court of Appeals affirmed that Respondent's cause of action accrued on or prior to October 17, 1979. On that date, Respondent knew of her alleged status and was entitled to file an action to establish that status. *See, e.g., Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 339-40, *reh'g denied*, 401 U.S. 1015 (1971). Because she did not bring suit on that cause of action until September 12, 1985, more than the three-years permitted under Section 507(b), the District Court was correct in holding that Respondent's first claim for relief should be barred.

C. RESPONDENT IS NOT INCLUDED UNDER THE DEFINITION OF "CHILDREN" IN THE 1976 COPYRIGHT ACT.

1. The Uniform Definition of "Children" Adopted by Congress as Section 101 of the 1976 Copyright Act Applies to Copyright Renewals Under the Act.

This Court should determine a uniform federal rule to govern whether the definition of children under Section 101 includes a child, such as Respondent, adopted out of the family of an author of a Work. In determining that Respondent was an heir and thus within the definition of "children" under the Act, the Court of Appeals ignored state law and the language of Section 101.

(a) Governing Law.

Section 304(a) of Title 17, United States Code (the "Copyright Act"), effective January 1, 1978, provides, in relevant part:

> *Section 304(a).* . . . [T]he author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his or her next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of forty-seven years . . . .

Section 304(a) is the governing statutory law with respect to Respondent's status as a child of Williams, Sr. for the purposes of determining her alleged interest in the renewal term of copyright in all Works, the copyrights in which became subject to renewal on or after January 1, 1978.

Section 101 of the Copyright Act was enacted in an effort to provide uniform definitions for some of the terms used in the Copyright Act. Section 101 defines the term "children" as follows:

> A person's "children" are that person's immediate offspring, whether legitimate or not, *and any children legally adopted by that person.*

17 U.S.C. Section 101 (emphasis added).

(b) Legislative History.

The definition of children in its present form first appeared in the 1965 Copyright Revision Bill. The purpose for specifically including illegitimate children in the above definition was "in an effort to avoid the uncertainties, confusion, and possible injustices that would arise if the question were left entirely to a determination under

the various state laws." *Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Laws*, 1965 Revision Bill, Part 6, at 74 (1965).

Additional evidence as to the specific problems that Congress sought to address with the definition of "children" is found in Barbara Ringer's Study No. 31. Barbara A. Ringer, *Renewal of Copyright, in Studies on Copyright* (1960) (hereinafter "Study No. 31"). In Study No. 31, Ringer recognized that *DeSylva v. Ballentine*, 351 U.S. 570 (1956), referred the courts to controlling state law for the definition of children for purposes of determining beneficiaries entitled to claim renewal rights under Section 24 of the 1909 Act. Ringer expressed concern relative to the lack of uniformity in situations involving illegitimate children. Ringer noted that:

> Likewise, in addition to the problems of illegitimacy and remarriage, state law would presumably be determative of the many other questions involved in deciding whether someone is a "widow" or a "child" – the validity of a marriage, divorce or adoption, the status of stepchildren, foster children, posthumous children, etc.

Study No. 31 at 152. Ringer summed up the problem by observing that "[t]he difficulty, of course, arises from using indefinite terms in the statute without defining them or indicating how they are to be defined." *Id.* at 180.

Although the Supreme Court declared in *DeSylva* that "there is no federal law of domestic relations," 351 U.S. at 580, a recent decision by this Court evidences that the Court has virtually overruled *DeSylva* with respect to renewals under the Copyright Act of 1976. The Court now appears to embrace the position espoused by Justice Douglas in his dissent in *DeSylva*, that the federal policy under copyright would best be effectuated by federal uniformity. *See* 351 U.S. at 583 (Douglas, J., dissenting). In *Community for Creative Non-Violence v. Reid*, 490 U.S. 730,

109 S.Ct. 2166 (1989), the Court was asked to interpret the "work for hire" definition contained in Section 101. In doing so, Justice Marshall noted that reliance on the general common law rather than the law of any particular state to give meaning to a federal statutory definition "reflects the fact that federal statutes are generally intended to have uniform nationwide application." 109 S.Ct. at 2173. The Court held that in copyright actions, establishment of a federal rule, rather than reliance on state law, "is particularly appropriate . . . given the [Copyright] Act's express objective of creating national uniform copyright law by broadly pre-empting state statutory and common-law copyright regulation." *Id.*

In line with *Reid*, a uniform rule should be adopted by this Court for the definition of "child" for purposes of entitlement to an interest in the renewal term of copyright of a work subject to renewal after January 1, 1978. The need for such a uniform rule is evidenced by the policy discussions below.

2. In Light of the Policy of Federal Copyright Law to Provide Support for an Author and the Author's Dependents, Biological Offspring of the Author who are Adopted by Persons Other than the Author ("Adopted Out") Are Not "Children" as Defined by Section 101 of the 1976 Copyright Act.

Section 101 defined "children" to include "any children legally adopted by [a] person." It is undisputed that Respondent has been adopted and that Respondent is entitled to all the rights and privileges which flow from her status as the adopted child of the Deuprees.[5] It is

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[5] Respondent, in fact, has asserted those rights in an action regarding the estate of her adoptive mother Mary Louise Deupree.

likewise undisputed that Respondent would be entitled to all of the rights of a child of the Deuprees with respect to any copyrightable works created by the Deuprees. The question that is left undecided by Section 101 is whether the biological child of an author is entitled to all of the rights and privileges of a "child" of the author under the Copyright Act once that child has been adopted by other parties, specifically other parties unrelated to either biological parent; i.e., whether Respondent has the status of a "child" of Williams, Sr. under the Copyright Act. An examination of several general policies indicates that she should not.

(a) Policy on Class Gifts.

The interest in renewal rights is analogous to a forced bequest to a class of persons. Accordingly, the law relative to class gifts and bequests is useful in determining a general federal rule with respect to adopted children. The Restatement (Second) of Property, "Donative Transfers," Section 25.5 (Tent. Draft No. 8, 1985) provides that:

> Gifts to "Children" – Child of Person Adopted by Another.
>
> When the donor of property describes the beneficiaries thereof as "children" of a designated person, the primary meaning of such class gift term excludes descendants of such person in the first generation who have been adopted by another, if such adoption removes the child from the broader family circle of the designated person. It is assumed, in the absence of language or circumstances indicating a contrary intent, that the donor adopts such primary meaning.
>
> Comment:
>
> A. Rationale. When a child has been removed from the family circle of the child's natural parents by adoption, it is reasonable to conclude that the donor would no longer intend such

> adopted child to be treated as continuing on the same basis as those children who remain in the family circle the donor is benefiting. This section recognizes this reasonable conclusion by excluding in such case the adopted-out child from the primary meaning of the gift to "children." When the adoption out does not remove the child from the family circle of the designated person, as in the case of an adoption by the spouse of the person whose children are named as beneficiaries, the adopted-out child is not excluded.

Rights in the renewal term of copyright are a creature of statute enacted by Congress. Regarding interests in copyright renewal terms, Congress has not provided language contrary to the above-quoted excerpt from the Restatement (Second) of Property. Thus, consistent with Comment (a), a child adopted by another is not the child of its natural parents for purposes of renewals of copyrights under the 1976 Act. This is consistent with state laws, including those of Alabama, where the adoption occurred and the child resides. *See* Ala. Code Section 43-8-48(1) ("An adopted person is the child of an adopting parent and not of the natural parents. . . . ").

(b) Copyright Policy.

The underlying purpose of Section 24 of the Prior Act was to provide for the author and the family of the author after his death. *DeSylva*, 351 U.S. at 582. In retaining the reversionary aspects of renewals, Congress desired to ensure that the author's *dependent* relatives would receive the benefits of the renewal copyright. Study No. 31 at 125. The structure of the classes of persons entitled to an interest in the renewal term was carried over intact into Section 304(a) of the Copyright Act, assuring that the benefits of the renewal term went to "those naturally *dependent* upon the deceased author's

bounty." S. Rep. No. 94-473, 94th Cong., 1st Sess. 139 (1975).

Once adopted, a child is no longer legally or morally dependent upon his or her natural parents for support. Once adopted, he or she becomes the child of his or her adopting parents from whom the adopted child is entitled to inherit. Such children should be excluded from the class of persons entitled to an interest in the renewal term for copyright of any works authored by such child's natural parents.

(c) General Adoption Policy

Adoption statutorily exists in all of the fifty states as a means of furthering state public policy in providing a child with an entirely new family when the natural relationship between parent and child ends for any reason. *In re Anonymous*, 390 N.Y.S.2d 779, 781 (N.Y. Surr. Ct. 1976). As recognized in *In re Estate of Best*, 485 N.E.2d 1010 (N.Y. 1985), *cert. denied sub nom. McCollum v. Reid*, 475 U.S. 1083 (1986), powerful policy considerations militate against construing a class gift (such as an interest in the renewal term of copyright) to include a child adopted by others, whose biological parents parental rights have been terminated. Recognition of such class gifts would be inconsistent with the child's complete assimilation into the adoptive family. *Id.*

The goals of removing the unwarranted stigma from illegitimate children and assimilating the adopted child into a new family are advanced by declaring his or her status to be that of the child of his or her adopting parents and not of his or her natural parents.

Excluding adopted-out children from Section 101 meets the needs of other public policies as well. If an adopted child could retain his or her status as a child of his or her natural parents, the title to any renewal copyright which vests after the death of the author would be forever clouded. The life of each deceased author would need to be examined to determine the possible existence of undisclosed natural children who might have been adopted by others. Absent such a determination, where an author has died before vesting, no clear title to a renewal copyright could be transferred because the possibility of litigation instigated by an individual claiming to be a deceased author's child who had been adopted would always exist.[6]

3. Conclusion.

The Supreme Court acknowledged a differential between the physical relationship and legal status in *DeSylva* when it stated that "the word 'children', although it to some extent describes a purely physical relationship, also describes a legal status." 351 U.S. at 580. Section 101 attempted to define that status, but left open the question presented by this action. Based upon the policies favoring uniform federal rules in interpreting the Copyright Act, this Court should establish that a natural child of an author who is adopted by third persons does not occupy the status of a child of the author pursuant to Section 101. The decision of the Second Circuit, therefore, concerns an important question of federal law which has not been, but should be, reviewed by this Court.

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[6] Indeed, if, as the Second Circuit erroneously held, the bar of the statute of limitations was not applicable, there could never be clear title to the renewal copyright of an author who died before the vesting thereof.

IX. CONCLUSION

The Second Circuit's actions in this matter are in conflict with decisions of this Court and other circuits. In addition, the Court of Appeals' opinion concerns important questions of federal law which have not been, but should be, settled by this Court. The questions are of national importance. Petitioners respectfully request that this Court grant certiorari to review the judgment of the Second Circuit, dated July 13, 1992.

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APPENDIX A-1

Cathy Yvonne STONE, Plaintiff-Appellant,

v.

Hank WILLIAMS, Jr., Billie Jean Williams Berlin, Chappell Music Company, a division of Chappell & Co., Inc., a Delaware Corporation, Aberbach Enterprises, Ltd., a New York Corporation, Acuff-Rose-Opryland Music, Inc., a Tennessee Corporation, Milene-Opryland Music, Inc., a Tennessee Corporation, Wesley H. Rose and Roy Acuff, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., Fred Rose Music, Inc., a Tennessee Corporation, and Milene Music Inc., a Tennessee Corporation, Defendants-Appellants.

Docket No. 91-7706.

United States Court of Appeals,
Second Circuit.

Submitted Nov. 13, 1991.

Decided July 13, 1992.

Illegitimate daughter of singer composer sought share of copyright renewal rights. The United States District Court for the Southern District of New York granted motion against daughter on ground of laches. Daughter appealed. The Court of Appeals, 873 F.2d 620 affirmed. On petition for rehearing, the Court of Appeals, 891 F.2d 401, held that action was not barred by laches. On remand, the District Court, John F. Keenan, J., 766 F.Supp. 158, dismissed case, and appeal was taken. The Court of Appeals, Cardamone, Circuit Judge, held that daughter

was entitled to share of copyright renewals under both Copyright Act of 1909 and Copyright Act of 1976 as she was included in state law definition of "children" entitled to inherit.

Reversed and remanded.

Milton A. Rudin, Beverly Hills, Cal. (Joseph L. Golden, Rudin, Appel & Rosenfield, Beverly Hills, Cal., Kenneth E. Warner, Coblence & Warner, New York City, of counsel), for plaintiff-appellant Cathy Yvonne Stone.

Alan L. Shulman, New York City (Richard H. Frank, Jr., W. Michael Milom, Christian A. Horsnell, Silverman & Shulman, P.C., New York City, Lawrence I. Fox, Stephen K. Rush, David L. Kleinfelter, McDermott, Will & Emery, New York City, of counsel), for defendants-appellees Hank Williams, Jr., Acuff-Rose-Opryland Music, Inc., Milene-Opryland Music, Inc., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc.

Thomas R. Levy, New York City, for defendants-appellees Billie Jean Williams Berlin, Chappell Music Co. and Aberback Enterprises, Ltd.

Before: VAN GRAAFEILAND, CARDAMONE, and PIERCE, Circuit Judges.

CARDAMONE, Circuit Judge:

This appeal continues the bitter litigation arising from plaintiff's belated discovery that she is the daughter of the late famous country and western singer Hank Williams, Sr. Because we have set forth in some detail on two previous occasions the principal players and their roles in this matter, *see Stone v. Williams*, 873 F.2d 620 (2d Cir.) (*Stone I*), *cert. denied*, 493 U.S. 959, 110 S.Ct. 377, 107

L.Ed.2d 362 (1989), *vacated*, 891 F.2d 401 (2d Cir.1989) (*Stone II*), *cert. denied*, 496 U.S. 937, 110 S.Ct. 3215, 110 L.Ed.2d 662 (1990), we assume the reader's familiarity with much of the background and report only such facts in the following discussion as is necessary to make it intelligible.

Plaintiff commenced this action in the United States District Court for the Southern District of New York (Keenan, J.) on September 12, 1985 seeking a declaration that she is Williams, Sr.'s child within the meaning of §§ 24 and 304(a) of the Copyright Acts of 1909, ch. 320, 35 Stat. 1075 *et seq.* (1909), as amended, ch. 391, 61 Stat. 652 *et seq.* (1947), and 1976, 17 U.S.C. §§ 101 *et seq.*, respectively, and therefore entitled to copyright renewals for his extensive repertory of songs. The defendants are Hank Williams, Jr., the singer's son, and Billie Jean Williams Berlin, the singer's widow. The other defendants in this suit are assignees of certain of their interests. Williams, Jr. assigned an interest in his renewal copyrights to defendants Fred Rose Music, Inc. (Fred Rose), which subsequently assigned certain rights to Milene Music, Inc. (Milene). Defendants Wesley Rose and Roy Acuff served as liquidation trustees for Fred Rose and Milene. Acuff-Rose Opryland Music, Inc. (Acuff-Rose) and Milene-Opryland Music, Inc. (Milene-Opryland) are successors in interest to Wesley Rose and Roy Acuff. Thus, Williams, Jr., Acuff-Rose, Milene-Opryland, Wesley Rose, Roy Acuff, Fred Rose and Milene (collectively, the Acuff/Rose defendants) hold an interest in the copyright renewals through Williams, Jr. Billie Jean Williams Berlin assigned an interest to defendant Aberbach Enterprises, Ltd. (Aberbach) in her copyright renewals. By contract with

Aberbach, Chappell Music Co. (Chappell) serves as administrator of Berlin's interests in the renewal copyrights. Thus, Berlin, Aberbach and Chappell (collectively, the Berlin defendants) hold an interest in the copyright renewals through Berlin.

The district court in 1988, 1988 WL 96091, granted summary judgment in favor of defendants on the ground of laches. We affirmed. *Stone I*, 873 F.2d at 624-26. On petition for rehearing the decision in *Stone I* was vacated and the panel reversed the district court's holding on laches, *Stone II*, 891 F.2d at 404-05, in light of the Alabama Supreme Court's intervening decision in *Stone v. Gulf American Fire & Casualty Co.*, 554 So.2d 346 (Ala.1989) (*Gulf American*), *cert. denied*, 496 U.S. 943, 110 S.Ct. 3229, 110 L.Ed.2d 676 (1990).

The *Gulf American* suit was instituted by defendants Williams, Jr., Wesley Rose and Roy Acuff, seeking a declaration that Stone was barred from demonstrating that she was the natural child of Williams, Sr. entitled to a share of his estate. Stone counter-claimed seeking to establish her status as a child of Williams, Sr. and also filed a third-party action seeking to have his estate reopened. She alleged in her third-party action that Irene Smith (Williams, Sr.'s sister, who served as administratrix of the estate), Robert Stewart (attorney for the estate), and the insurance companies serving as sureties for the estate had conspired to conceal her identity. The Alabama Circuit Court granted summary judgment in favor of Williams, Jr., Wesley Rose and Roy Acuff in their declaratory suit and in favor of the third-party defendants in Stone's suit to reopen the estate, though it did hold after a trial that

Williams, Sr. was Stone's father. Stone appealed the decision denying her application to reopen the estate. Williams Jr., Rose and Acuff took no appeal from the trial court's finding that Stone was the daughter of Williams Sr.

On Stone's appeal, the Alabama Supreme Court reversed. It set aside judgments rendered by the Montgomery County Circuit Court in 1967 and 1968 declaring Williams, Jr. to be the sole beneficiary of the estate, and held that plaintiff was entitled to a proportional share of the proceeds of Williams, Sr.'s estate. The Alabama Supreme Court concluded that due to the fraud and concealment by the parties involved, plaintiff's action to reopen her father's estate was timely. In light of this finding, we held that laches did not bar plaintiff's suit, *see Stone II*, 891 F.2d at 404-405, and accordingly remanded the case to the district court for further proceedings.

On remand, the district court considered alternative bases asserted by defendants for summary judgment. It held the paternity decision in *Gulf American* was not entitled to preclusive effect because Williams, Jr. was not afforded a full and fair opportunity to litigate the issues decided and because none of the other defendants were parties or in privity with parties to the third-party action appealed to the Alabama Supreme Court. The district court further ruled that Stone's first cause of action accrued no later than October 17, 1979 and was therefore barred by the three year statute of limitations in 17 U.S.C. § 507(b), 766 F.Supp. 158. As to plaintiff's second cause of action – alleging conspiracy to suppress material facts concerning her status and rights as an heir – the district court found that as defendants were under no duty to

divulge information to plaintiff, their mere silence could not give rise to a claim for conspiracy. Stone appeals. We reverse.

DISCUSSION

I Statute of Limitations

The first question addressed is whether plaintiff's first cause of action seeking an interest in renewals is time-barred. We start with the Copyright Act of 1976 that provides

> No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the *claim accrued*.

17 U.S.C. § 507(b) (emphasis added). This provision parallels § 115(b) of the 1909 Act, as amended, Pub.L. No. 85-313, 71 Stat. 633 (1957). H.R.Rep. No. 1476, 94th Cong., 2d Sess. 164, *reprinted in* 1976 U.S.Code Cong. & Admin.News 5659, 5780. As no substantive change for limitations purposes was made, the considerations underlying our analysis are the same for renewals governed under either the 1909 or 1976 Act. *See Taylor v. Meirick*, 712 F.2d 1112, 1118 (7th Cir.1983).

A. *Declaration of Rights*

The district court viewed Stone's action merely as seeking a declaration of her rights under the Copyright Act. It concluded further that since her claim accrued no later than October 17, 1979 – when plaintiff admitted having been told by her adoptive mother of her possible

identity – her suit, brought more than three years after October 17, 1979, was untimely. We agree Stone is attempting to establish her status as a "child" of Williams, Sr. through a declaratory judgment action. Yet, it is plain that plaintiff seeks more than a declaration of her rights, as her third amended complaint demonstrates: "FIRST CLAIM FOR RELIEF FOR DECLARATION OF RIGHTS, ACCOUNTING, DAMAGES, AND IMPOSITION OF CONSTRUCTIVE TRUST AND/OR RESULTING TRUST." These different claims must be analyzed separately for statute of limitations purposes.

In ruling that because the Copyright Act has a three-year statute of limitations, declaratory judgment suits are subject to the same time-bar, the district court lumped together separate and district claims made by plaintiff: one, for a declaration of status, and the other for relief as a result of that status. Because a declaratory judgment action is a procedural device used to vindicate substantive rights, it is time-barred only if relief on a direct claim based on such rights would also be barred. *See 118 E. 60th Owners, Inc. v. Bonner Properties, Inc.*, 677 F.2d 200, 202 (2d Cir.1982); *Luckenbach S.S. Co. v. United States*, 312 F.2d 545, 548 (2d Cir.1963). Thus, determining whether the three year statute of limitations in § 507(b) prevents plaintiff from seeking a declaration that she is a child of Williams, Sr. requires assessment of whether the relief sought as the result of such status, specifically, an accounting, damages and imposition of a constructive trust – the substantive cause of action – is time barred.

B. *Substantive Cause of Action*

In determining whether the relief sought is time-barred, we must decide when it first arose. In this connection, we observe that Stone's asserted right to relief stems from defendants' failure to remit royalty payments to which she claims entitlement as a child of Williams, Sr. A cause of action accrues when a plaintiff knows or has reason to know of the injury upon which the claim is premised. *See Cullen v. Margiotta*, 811 F.2d 698, 725 (2d Cir.), *cert. denied*, 483 U.S. 1021, 107 S.Ct. 3266, 97 L.Ed.2d 764 (1987); *Keating v. Carey*, 706 F.2d 377, 382 (2d Cir.1983). The claim in this case is an entitlement to renewal copyrights under §§ 24 and 304(a) of the 1909 and 1976 Acts. The injury which is the basis of the action is the deprivation of this statutory entitlement. Thus, the statute of limitations did not begin to run until plaintiff had reason to know of the facts giving rise to her statutory entitlement, *i.e.*, that she was a child of Williams, Sr. Accordingly, for plaintiff's cause of action to have accrued – for plaintiff to have known or have had reason to know of her injury – "knowledge" that Williams, Sr. was her natural father was essential.

1. *Accrual*

The district court found that by October 17, 1979 a reasonably diligent person in plaintiff's position would have been put on inquiry as to the existence of a right to renewals in Williams, Sr.'s works. We agree. The record reveals that plaintiff first learned in 1973 from her adoptive mother of the possibility that she might be the

daughter of Williams, Sr. In 1974, she read a biography which mentioned that he may have fathered an illegitimate daughter. *See Stone I*, 873 F.2d at 622-23. On October 17, 1979 she acknowledged to representatives of the Alabama Department of Pensions and Security that her adoptive mother had told her that Williams, Sr. might be her natural father. At this point, Stone had notice of her claim. Although plaintiff's failure to pursue the matter aggressively until her adoptive father indicated his support if she desired to do so might be excusable for purposes of laches, *see id.* at 624, it is irrelevant to the question of whether she had notice of her claim for statute of limitations purposes.

Plaintiff argues that the statute of limitations should be tolled due to the fraud perpetrated on her. We agree that plaintiff's relationship with Williams, Sr. was fraudulently concealed, and the law is clear that fraudulent concealment of the existence of a cause of action tolls the running of the statute of limitations. *See, e.g., Barrett v. United States*, 689 F.2d 324, 327 (2d Cir.1982), *cert. denied*, 462 U.S. 1131, 103 S.Ct. 3111, 77 L.Ed.2d 1366 (1983). But such tolling is not indefinite. It lasts only so long as the fraud is effective. *See Prather v. Neva Paperbacks, Inc.*, 446 F.2d 338, 341 (5th Cir.1971). Fraudulent concealment does not lessen a plaintiff's duty of diligence; it merely measures what a reasonably diligent plaintiff would or could have known regarding the claim. *See Campbell v. Upjohn Co.*, 676 F.2d 1122, 1128 (6th Cir.1982).

The fact that it was fraudulently concealed from plaintiff that Williams, Sr. was her natural father therefore tolls the statute only up to the time when, despite the fraud, plaintiff had notice of this possibility. *Prather*, 446

F.2d at 341 (once plaintiff on inquiry that potential claim exists statute of limitations starts to run) (quoting *Japanese War Notes Claimants Ass'n v. United States*, 373 F.2d 356, 359, 178 Ct.Cl. 630, *cert. denied*, 389 U.S. 971, 88 S.Ct. 466, 19 L.Ed.2d 461 (1967)). The duty of inquiry having arisen, plaintiff is charged with whatever knowledge an inquiry would have revealed. *See, e.g., Armstrong v. McAlpin*, 699 F.2d 79, 88 (2d Cir.1983); *Briskin v. Ernst & Ernst*, 589 F.2d 1363, 1367 (9th Cir.1978).

Plaintiff asserts that even assuming she knew in October 1979 of the possibility that she was Williams, Sr.'s daughter, such knowledge was insufficient to commence the running of the limitations period because she was unaware then that she was suffering *economic* injury. In other words, the statute did not run until she learned there were property interests denominated copyright renewals to which she might be entitled.

We cannot adopt the proposition that to trigger the statute of limitations not only must plaintiff know of the facts furnishing her with a cause of action, but also that those facts are sufficient to entitle her to relief. *See Arneil v. Ramsey*, 550 F.2d 774, 781 (2d Cir.1977) (unawareness of law does not justify suspending operation of statute); *Japanese War Notes*, 373 F.2d at 359 (ignorance of rights which should be known is not enough to toll statute). While the case law has stressed that a plaintiff must know of the "injury," by adding the adjective "economic" plaintiff cannot undermine the premise upon which these holdings are based: the legal rights that stem from certain facts or circumstances need not be known, only the facts or circumstances themselves. *See United States v. Kubrick*, 444 U.S. 111, 123, 100 S.Ct. 352, 360, 62 L.Ed.2d 259 (1979)

(accrual of negligence claim under Federal Tort Claims Act occurs when plaintiff knows of the physical harm and who inflicted it, not when plaintiff later becomes aware that complained-of injury was negligently inflicted); *Barrett*, 689 F.2d at 328. In this case, Stone was put on notice no later than October 1979 that she might be the child of Williams, Sr., and she knew then that she was receiving no money as a result of such relationship. This was sufficient knowledge of the relevant facts to start the limitations period running.

2. *Relief*

Having concluded that Stone had notice of a potential claim by October of 1979, the question then becomes the significance for limitations purposes of such information. Plaintiff argues that this knowledge, though arising more than three years prior to her suit, does not bar relief for deprivations occurring before September 12, 1982. She contends that defendants' ongoing exploitation of her interest in the copyright renewals and their failure to account to her for her share is a continuous course of wrongful conduct precluding a statute of limitations defense. *See generally, e.g., Rapf v. Suffolk, County of New York*, 755 F.2d 282, 290 (2d Cir.1985); *Avco Corp. v. Precision Air Parts, Inc.*, 676 F.2d 494, 496 (11th Cir.), *cert. denied*, 459 U.S. 1037, 103 S.Ct. 450, 74 L.Ed.2d 604 (1982). We disagree.

The holder of a copyright has a property interest which, when invaded by an infringer, may be vindicated by an infringement action. 17 U.S.C. § 501(b). Each act of

infringement is a distinct harm giving rise to an independent claim for relief. *See Mount v. Book-of-the-Month Club, Inc.*, 555 F.2d 1108 (2d Cir.1977). This does not mean that when infringements occur during the limitations period recovery may be had for past infringements. Recovery is allowed only for those acts occurring within three years of suit, and is disallowed for earlier infringing acts. *See id.* at 1110-11. Application of the continuous wrong doctrine generally has been rejected in the infringement context. *See, e.g., Hoey v. Dexel Systems Corp.*, 716 F.Supp. 222, 223-24 (E.D. Va. 1989); *Gaste v. Kaiserman*, 669 F.Supp. 583, 584 (S.D.N.Y.1987); *Hoste v. Radio Corp. of America*, 654 F.2d 11, 11-12 (6th Cir.1981) (per curiam).

The same rule that governs infringements of copyrights applies to renewal royalties. Infringements of copyrights are actionable because they deprive the copyright holder of the exclusive benefit from exploitation of that work to which he or she is statutorily entitled. *See* 17 U.S.C. § 106. *Cf. Washingtonian Publishing Co. v. Pearson*, 306 U.S. 30, 39, 59 S.Ct. 397, 401-02, 83 L.Ed. 470 (1939) (value of copyright depends on the possibility of its enforcement). Similarly, copyright renewals are a property interest created by statute for the remunerative benefit of the author, or if the author is not alive at the expiration of the original term, for a class of designated statutory beneficiaries. *See, e.g., Stewart v. Abend*, 495 U.S. 207, 217-19, 110 S.Ct. 1750, 1758-59, 109 L.Ed.2d 184 (1990). Each time the holder of a copyright renewal is deprived of his or her statutory entitlement, for example, by nonpayment of royalties, a distinct harm is done to the owner's property interest. Stone's failure to seek relief promptly for violations of her entitlement to renewal

copyrights does not make defendants immune from suit for later violations.

Defendants respond that infringement cases are distinguishable because the copyright's ownership had been established within the limitations period. Here, defendants insist, because plaintiff did not seek a judicial determination that she was an owner of the copyright renewals within three years of 1979 she cannot now do so and then assert a cause of action based on such ownership.

An overly technical approach to copyright entitlements has not carried the day in other contexts, and it fails to do so in this one. *See generally* 3 M. Nimmer & D. Nimmer, Nimmer on Copyright § 12.05, at 12-104-05 (1992) (Nimmer) (where failure to satisfy procedural requirements is jurisdictional courts generally allow procedural compliance to relate back to filing of complaint). For instance, it had been held under the 1909 Act that since an author's claim to copyright arose upon publication with notice of copyright (under the 1976 Act copyright protection begins from the date of "creation," 17 U.S.C. § 302(a)), mere delay in depositing copies (necessary to institute suit) did not bar relief for acts of infringement occurring within the limitations period. *See Washingtonian Publishing*, 306 U.S. at 39-42, 59 S.Ct. at 401-403, *see also Ziegelheim v. Flohr*, 119 F.Supp. 324, 328-29 (E.D.N.Y.1954) (delay in obtaining certificate of registration does not constitute abandonment of copyright). Similarly, failure to timely file a notice of use did not bar claims based on infringing acts done subsequent to such filing and within three years of suit. *See Norbay Music, Inc. v. King Records, Inc.*, 290 F.2d 617, 619 (2d Cir.1961);

see also Rosette v. Rainbo Record Mfg. Corp., 354 F.Supp. 1183, 1192-93 (S.D.N.Y.1973), *aff'd*, 546 F.2d 461 (2d Cir.1976) (per curiam).

Defendants' contention ignores the distinction between what must be done to give rise to certain rights and what needs to be done to vindicate those rights. *See United States v. Obermeier*, 186 F.2d 243, 254-55 (2d Cir.1950) (except in the rare instance when the statute creating the substantive right makes the limitation period a part of, or qualification on, the right itself, limitation statute establishes no unalterable legal relationships), *cert. denied*, 340 U.S. 951, 71 S.Ct. 569, 95 L.Ed. 685 (1951); *cf. Kunstsammlungen Zu Weimar v. Elicofon*, 678 F.2d 1150, 1161 (2d Cir.1982) (where demand and refusal are substantive elements of cause of action for replevin, statute of limitations begins to run only after refusal, not when right to make demand arises). *See also Epoch Producing Corp. v. Killiam Shows, Inc.*, 522 F.2d 737, 740-41 n. 2 (2d Cir.1975), *cert. denied*, 424 U.S. 955, 96 S.Ct. 1429, 47 L.Ed.2d 360 (1976).

As with a copyright itself, a copyright renewal is a creature of statute. *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373, 375, 80 S.Ct. 792, 794, 4 L.Ed.2d 804 (1960). One's entitlement to a copyright or a renewal is therefore determined by statute, *see Epoch Producing Corp.*, 522 F.2d at 743, and the statute nowhere suggests that one loses a right to renewals merely by delaying assertion of that right. *Cf. Hampton v. Paramount Pictures Corp.*, 279 F.2d 100, 104 (9th Cir.) (mere lack of action does not amount to abandonment of copyright), *cert. denied*, 364 U.S. 882, 81 S.Ct. 170, 5 L.Ed.2d 103 (1960); *Universal Pictures Co. v. Harold Lloyd Corp.*, 162 F.2d 354, 372 (9th

Cir. 1947) (delay amounts to estoppel only where it is such as to justify belief by infringer that there is immunity from a claim of liability).

Of course, a copyright and its renewal are continuous, though distinct, property interests stemming from the original work. Consequently, failure to register and renew a copyright prior to expiration of the original term prevents the renewal copyright from ever arising. *See, e.g., G. Ricordi & Co. v. Paramount Pictures, Inc.*, 189 F.2d 469, 471 (2d Cir.), *cert. denied*, 342 U.S. 849, 72 S.Ct. 77, 96 L.Ed. 641 (1951); *Silverman v. Sunrise Pictures Corp.*, 273 F. 909, 912 (2d Cir.1921). But this is not the situation at bar. Here, the copyright renewal, as a property interest, was properly established. The question presented is the extent to which, once so created, one entitled to share in it is barred from realizing that share. *See Rose v. Bourne, Inc.*, 176 F.Supp. 605, 610 (S.D.N.Y.1959) (registration renews a copyright but does not determine ownership of the copyright as renewed), *aff'd*, 279 F.2d 79 (2d Cir.) (per curiam), *cert. denied*, 364 U.S. 880, 81 S.Ct. 170, 5 L.Ed.2d 103 (1960).

In order for plaintiff to be entitled to a share of copyright renewals under §§ 24 and 304(a), she need only be a "child" of the author. One does not lose such status because of delay in asking a court to declare it. Hence, as certification or registration and like requirements are necessary to maintain infringement actions, establishment of one's status as a child is necessary to maintain an action alleging deprivation of renewal rights; since a failure to satisfy such prerequisites to bringing suit may be cured and does not forever preclude relief for infringements, by a parity of reasoning, a failure to establish status as a

child does not forever preclude relief for the invasion of renewal rights.

Accordingly, merely because Stone could have brought suit in 1979 does not prevent her suit (only some of the relief sought) in 1985. To hold otherwise would ignore the long established rule that statutes of limitations bar remedies, not the assertion of rights. *See, e.g., Obermeier,* 186 F.2d at 254. This principle applies to the Copyright Act. *Prather,* 446 F.2d at 340. Thus, Stone's suit is timely insofar as relief is sought for defendants' failure to remit to her a proportionate share of royalties received within three years of suit. *See Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.,* 223 F.2d 252, 254 (2d Cir.1955) (per curiam) (co-owners of renewal copyrights must account to each other for exploitation thereof), *modifying,* 221 F.2d 569 (2d Cir.1955); *Tobani v. Carl Fischer, Inc.,* 98 F.2d 57, 59 (2d Cir.) (renewal taken out by one child held for benefit of other children), *cert. denied,* 305 U.S. 650, 59 S.Ct. 243, 83 L.Ed. 420 (1938). *See also Edward B. Marks Music Corp. v. Charles K. Harris Music Publishing Co.,* 255 F.2d 518, 522 (2d Cir.) (plaintiff having won on claim seeking a declaration of ownership of renewal copyrights, it was error for district court to deny plaintiff's motion for further relief based on declaration; unless otherwise barred, further relief based on declaration is proper), *cert. denied,* 358 U.S. 831, 79 S.Ct. 51, 3 L.Ed.2d 69 (1958).

Stone's alternative claim for the imposition of a constructive trust on income derived from the renewals is also timely. A constructive trust is a remedial device imposed in favor of one entitled to property that is wrongfully withheld or where to allow the present holder to retain the property would result in unjust enrichment.

See V A.W. Scott, The Law of Trusts §§ 461, 462.2, at 3410, 3417 (3d ed. 1967). Generally, a beneficiary is barred from enforcing a constructive trust if the limitations period for actions at law in analogous cases has run. *See id.* § 481.1 at 3465; *see also* 4A R. Powell, Powell on Real Property § 595, at 48-23-24 (P. Rohan ed. 1992) (as constructive trust is remedial rather than substantive device, the statute of limitations to be applied is determined by the nature of the right sued upon); *cf. Dolmetta v. Uintah Nat'l Corp.*, 712 F.2d 15, 18 (2d Cir.1983).

The analogous legal remedy for Stone's attempt to impose a constructive trust is an action for accounting and/or damages. The basis of such an action is her claimed entitlement to a share of copyright renewals. The nature of the right is such that a new claim for relief arises each time the right is invaded by defendants' failure to remit to plaintiff her due share of income derived from the renewals. Hence, if Stone is entitled to a share of renewals, a constructive trust may be imposed upon income derived from it within three years of suit. *See Brecht v. Bentley*, 185 F.Supp. 890, 894 (S.D.N.Y.1960) (cause of action to impose constructive trust on copyright accrues when defendant asserts rights in the copyright to the exclusion of plaintiff's claimed *interest* therein); *see also Dolmetta*, 712 F.2d at 18 (cause of action for imposition of constructive trust runs from occurrence of the wrongful act or event which creates the duty of restitution).

II Collateral Estoppel/*Res Judicata*

Accordingly, plaintiff is entitled to seek appropriate relief for defendants' failure to remit to her a due share of royalties received within three years of September 12,

1985 (the date her suit was commenced) if she is a "child" of Williams, Sr. within the meaning of §§ 24 and 304(a). The parties each contend that the other is either collaterally estopped or barred by *res judicata* from litigating Stone's paternity. Defendants contend that the 1967 and 1968 decisions of the Montgomery County Circuit Court are determinative on this question. Plaintiff asserts that the 1985 Alabama Supreme Court decision in *Gulf American* is similarly dispositive. We briefly summarize the history of these state court proceedings.

A. *History*

In 1963 Irene Smith, acting as guardian for Williams, Jr., assigned Williams, Jr.'s interest in the copyright renewals to Fred Rose. During state court proceedings to approve the agreement, the existence of appellant, though known by Smith and Fred Rose, was not disclosed and the agreement was approved. In 1967, Audrey Williams (Williams, Sr.'s ex-wife and the mother of Williams, Jr.) and Williams, Jr. petitioned the Montgomery County Circuit Court for final settlement of the estate. In 1968 related proceedings were instituted concerning the guardianship estate of Williams, Jr. In these proceedings the potential existence of unknown heirs was first made known to the Montgomery County Circuit Court. A guardian ad litem was appointed to represent such interests.

At issue in those proceedings was whether Williams, Jr. was the sole beneficiary entitled to inherit from Williams, Sr.'s estate. In its order of December 1, 1967, the Circuit Court ruled that there had not been sufficient

compliance with the laws of Alabama[1] to give Stone a right of inheritance from Williams, Sr. It concluded that Hank Williams, Jr. was the sole heir. The following month the same court decided plaintiff had no right to any of Williams, Sr.'s copyrights or renewals. These determinations that Stone was not an heir and not entitled to share in the estate were based on the fact that she had not been legitimized under Alabama law, *not on any finding that Stone was not the biological child of Williams, Sr.* The guardian ad litem's leave to appeal the state trial court's rulings was denied. The estate was finally closed in 1975.

In it July 5, 1989 decision the Alabama Supreme Court stated that the issue before it – in light of the trial

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[1] Ala.Code, Tit. 27, § 11 (1940)

Proceedings to legitimate bastard children; effect of:

The father of a bastard child may legitimate it, and render it capable of inheriting his estate, by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age, and the name of the mother, and that he thereby recognizes it as his child, and capable of inheriting his estate, real and personal, as if born in wedlock; the declaration being acknowledged by the maker before the judge of probate of the county of his residence, or its execution proved by the attesting witnesses, filed in the office of the judge of probate, and recorded in the minutes of his court, has the effect to legitimate such child.

"It is quite possible that the 1952 custody and support agreement [*see Stone I*, 873 F.2d at 622] would have been sufficient to legitimate Stone if Stewart, the child's mother, or other parties, including the State of Alabama, had attempted to utilize this method." *Gulf American*, 554 So.2d at 364 n. 19.

court's finding that Stone was the natural child of Williams, Sr. – was whether the 1967 and 1968 judgments should be set aside and the estate reopened because of legal fraud. Stone had appealed the grant of summary judgment in favor of defendants Smith, Stewart and the estate's sureties in her third-party action. Stone did not appeal the grant of summary judgment in favor of defendants Williams, Jr., Wesley Rose and Roy Acuff in their action seeking a declaration that Stone was barred from establishing any entitlement to the estate of Williams, Sr. No appeal was taken by any party from the trial court's finding of paternity.

The State Supreme Court concluded that Smith and Stewart withheld from the court before and during the 1967 and 1968 proceedings material facts of which they were aware concerning Stone's paternity. 554 So.2d at 352-60. As administratrix and attorney for the estate, respectively, they were obliged to advise the court of Stone's existence and potential claims, and their dereliction deprived Stone of the hearing to which she was entitled. *Id.* at 359-60.

For that reason *Gulf American* set aside the 1967 and 1968 judgments as they effected Stone's right to share in her father's estate. Even though no appeal had been taken from the declaratory judgment in the action instituted by Williams, Jr., Wesley Rose and Roy Acuff as plaintiffs, the Alabama Court determined Stone's right to inherit. It noted that under present Alabama law one method for an illegitimate child to be considered an heir of its father is if paternity is established by an adjudication before the death of the father or thereafter (without

time limit) by clear and convincing proof. Such evidence as found to exist in Stone's case. *Id.* at 367 & n. 23

Although a judicial determination of paternity was not available in 1967 or 1968 as an avenue of legitimation for purposes of intestate succession, the Supreme Court of Alabama ruled that since the action was timely and properly before it, it should apply the law presently in existence. *Id.* at 368. And because Stone was not adopted at the time of Williams, Sr.'s death – the time at which her right to inherit vested – her subsequent adoption was irrelevant for purposes of intestate succession. *Id.* at 368-69. It therefore ordered the estate reopened, and declared that Stone was entitled to her proportionate share of proceeds from the estate of Williams, Sr., but prospectively only.

On Application for Rehearing, *Gulf American* addressed the contention of Williams, Jr. that its original opinion should be vacated and/or modified because he was not a party to that appeal and therefore was denied due process. In a November 9, 1989 decision the court concluded that the complaint of Williams, Jr. and Stone's third-party complaint were litigated together and were functionally identical in terms of the issues presented. *See id.* at 373. Moreover, it held Stone's third-party suit to reopen the estate was an action *in rem* over which it had jurisdiction to review the rights of all affected parties. *Id.* at 373-74. Williams, Jr.'s petition was therefore denied

B. *Discussion*

28 U.S.C. § 1738 provides that

> judicial proceedings of any court of any State . . . shall have the same full faith and credit

> in every court within the United States . . . as they have by law or usage in the courts of [the] State . . . from which they are taken.

This statute places upon federal courts the same burden as the Constitution's Full Faith and Credit clause places upon state courts – "to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 466, 102 S.Ct. 1883, 1889, 72 L.Ed.2d 262 (1982). *Accord Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 104 S.Ct. 892, 896, 79 L.Ed.2d 56 (1984); *Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 704 & n. 9, 102 S.Ct. 1357, 1366 & n. 9, 71 L.Ed.2d 558 (1982). Our statement in *Stone II* that we were "not bound by the decision of the Alabama Supreme Court – its decision involved different parties and applicable law," 891 F.2d at 404, was addressed to *Gulf American's* finding of fraud on the part of Stewart and Smith. Paternity was not then an issue before us. Unlike the laches question presented in *Stone II*, we look to Alabama law to determine whether principles of *res judicata* or collateral estoppel bar the parties' respective arguments concerning heirship and paternity. *See, e.g., Kremer*, 456 U.S. at 481-82, 102 S.Ct. at 1897-98.

Generally, *res judicata* (claim preclusion) operates to prevent the parties or their privies to a prior action from litigating any matter that was or could have been decided in a previous suit. *See Murphy v. Gallagher*, 761 F.2d 878, 879 (2d Cir.1985). Broadly speaking, "a final judgment on the merits bars further claims by the parties or their privies based on the same cause of action." *Montana v.*

United States, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979). *Accord Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980); *Henderson v. Scott*, 418 So.2d 840, 841-42 (Ala.1982); *Wheeler v. First Ala. Bank of Birmingham*, 364 So.2d 1190, 1199 (Ala.1978) (parties must be "substantially identical").

Collateral estoppel (issue preclusion) comes into play when the subsequent action is "upon a different claim or demand." *United States v. Moser*, 266 U.S. 236, 241, 45 S.Ct. 66, 67, 69 L.Ed. 262 (1924). *Accord Allen*, 449 U.S. at 94, 101 S.Ct. at 414; *Owen v. Miller*, 414 So.2d 889, 891 (Ala. 1981); *Wheeler*, 364 So.2d at 1199. In such case, "the inquiry is whether the point or question presented for determination in the subsequent action is the same as that litigated and determined in the original action." *Moser*, 266 U.S. at 241, 45 S.Ct. at 67; *accord Montana*, 440 U.S. at 153, 99 S.Ct. at 973; *Owen*, 414 So.2d at 891; *Wheeler*, 364 So.2d at 1199. In essence, the functional difference between claim preclusion and issue preclusion is that while only the former can operate to prevent litigation of a matter that has never been decided, both prevent relitigation of an issue of fact or law that has already been necessarily decided as part of a valid, final judgment. *See Migra*, 465 U.S. at 77 n. 1, 104 S.Ct. at 894 n. 1; Commentary, *Issue Preclusion in Alabama*, 32 Ala.L.Rev. 500, 501-02 (1981).

1. *Preclusive Effect of 1967 and 1968 Decrees*

Defendants' insistence that the 1967 and 1968 decrees bar Stone's claim fails for two reasons. First and foremost, those decrees were set aside by *Gulf American*, a court of competent jurisdiction, *see infra*, at 1060, insofar as they

operated to preclude Stone from sharing in Williams, Sr.'s estate. 554 So.2d at 369. A judgment vacated or set aside has no preclusive effect. *See Webb v. Webb*, 263 Ala. 607, 83 So.2d 325, 329 (1955) (reversal of decree "had the effect of annulling it in its entirety and the case stood as though no decree had ever been rendered"); Commentary, 32 Ala.L.Rev. at 512. *See also* 1B J.M. Moore et al., Moore's Federal Practice ¶ 0.416[2], at 517 (2d ed. 1992) (judgment that has been vacated, reversed or set aside on appeal is deprived of all conclusive effect); Restatement (Second) of Judgments § 13 cmt. f (1980) (judgment ceases to be final for purposes of res judicata or collateral estoppel if set aside by trial court).

Second, the 1967 and 1968 proceedings did not reach the question of *paternity*, holding that even if Williams, Sr. was Stone's father, she was not his heir only because of a failure to meet statutory legitimation requirements. Paternity was not decided until the trial court in the *Gulf American* litigation made such a determination, in Stone's favor, in 1987. Thus, whatever preclusive effect the 1967 and 1968 decrees had was limited to heirship.

Intervening changes in federal constitutional and Alabama law regarding inheritance rights of illegitimate children would not alone provide a basis for Stone to relitigate this question. *See, e.g., Moser*, 266 U.S. at 242, 45 S.Ct. at 67 (issue preclusion applies to mixed questions of law and fact); Commentary, 32 Ala.L.Rev. at 513 (change in law as result of judicial decisions generally provides no basis for relitigation if change based on application of law to facts); *Trimble v. Branco Prods., Inc.*, 351 So.2d 1357, 1362 (Ala.1977). Nonetheless, because the Montgomery County Circuit Court did not have before it full and

complete information relevant to the question of whether Stone qualified as an heir, its decision, based on misinformation, does not bar "relitigation" of the preliminary question of paternity. *See Montana*, 440 U.S. at 159, 99 S.Ct. at 976 (change in facts essential to a judgment renders collateral estoppel inapplicable); *Jackson v. DeSoto Parish Sch. Bd.*, 585 F.2d 726, 729 (5th Cir.1978) (modification of significant facts creating new legal conditions allows relitigation). *See also Montana*, 440 U.S. at 164 n. 11, 99 S.Ct. at 979 n. 11 (redetermination of issues warranted if there is reason to doubt the quality, extensiveness or fairness of procedures followed in prior litigation); Restatement (Second) of Judgments § 73(2) (1980) (judgment may be modified if there has been such a substantial change in circumstances that giving continued effect to it is unjust).

Hence, plaintiff is not barred either by *res judicata* or collateral estoppel from litigating the question of her paternity. Whether the legal effect (heirship) of such a determination should be analyzed according to then-existing or present Alabama law is a separate question we will discuss in a moment.

2. *Preclusive Effect of* Gulf American

We turn now to analyze whether *Gulf American's* determination that Stone is the natural child of Williams, Sr. is binding on defendants. There is no serious dispute that Stone's status as a biological child of Williams, Sr. was actually litigated, determined and necessary to the judgment. Accordingly, we need not be concerned with whether the present suit and the Alabama suits are based

on the same cause of action, *i.e.*, whether the preclusive effect of *Gulf American* is to be analyzed under principles of *res judicata* or collateral estoppel. Defendants assert, though, that the decision is not "final" for purposes of preclusion because *Gulf American* remanded the matter for further proceedings. *See* 554 So.2d at 370. Alabama courts, like federal courts, generally apply the same test of finality for purposes of preclusion as they do for appealability. *See First Ala. Bank of Montgomery v. Parsons Steel*, 825 F.2d 1475, 1480 (11th Cir.1987), *cert. denied*, 484 U.S. 1060, 108 S.Ct. 1015, 98 L.Ed.2d 980 (1988); Commentary, 32 Ala.L.Rev. at 511. Defendants contend that the *Gulf American* decision is not final for purposes of appealability, and therefore is not final for purposes of preclusion.

Defendants are correct that ordinarily a decision accompanied by a remand with orders to proceed consistent with the opinion is not "final." *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 476-77, 95 S.Ct. 1029, 1036-37, 43 L.Ed.2d 328 (1975). But, such a decision generally is appealable when the *issue* to be addressed on appeal is final in the sense that it is not subject to further modification on remand. *Compare id.* at 485, 95 S.Ct. at 1041 (finality for purposes of review of state court judgments under then 28 U.S.C. § 1257 exists where, despite remand, decision "is plainly final on the federal issue and is not subject to further review in the state courts") *with San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 632-33, 101 S.Ct. 1287, 1294-95, 67 Ed.2d 551 (1981) (finding of "taking" not appealable as final until amount of compensation fixed). *See also Woodruff v. Smith*, 127 Ala. 65, 28 So. 736, 739-40 (1900) (in action to settle claims to

land, decree in which every question affecting the rights and equities of the parties was fully determined, leaving nothing to do but shape appropriate relief, is final for purposes of appeal).

Similarly, a judgment is considered final for purposes of issue preclusion if "the conclusion in question is procedurally definite." Restatement (Second) of Judgments § 13 cmt. g (1980). *See also Id.* cmt. b (for *res judicaia*, judgment ordinarily considered final if not contingent and represents completion of all steps in the adjudication short of execution or enforcement); *Zdanok v. Glidden Co.*, 327 F.2d 944, 955 (2d Cir.) (Friendly, J.) (collateral estoppel does not require a judgment which ends the litigation; once liability established, the mere fact that damages have not yet been fixed does not deprive the liability determination of any preclusive effect it might otherwise have), *cert. denied*, 377 U.S. 934, 84 S.Ct. 1338, 12 L.Ed.2d 298 (1964). Alabama courts have similarly assessed finality for purposes of preclusion by reference to "the quality of the judgment as to the issue . . . adjudicated." (*Sterling Oil of Okla, Inc. v. Pack*, 291 Ala. 727, 287 So.2d 847, 861 (1973) (per curiam) (grant of partial summary judgment entitled to preclusive effect). The decision in *Gulf American* being conclusive on the question of Stone's paternity, leaving open only the questions of appropriate relief and the manner in which the holding was to be enforced, is "final" for purposes of preclusion.

Consequently, *Gulf American's* determination on paternity is not open to attack by defendants, if they are bound by that judgment. As noted, the preclusive effect of the *Gulf American* decision must be assessed under Alabama law. If defendants are so bound, due process

proscribes giving effect to that determination unless the party (or its privy) against whom the prior adjudication is being asserted had a full and fair opportunity to litigate the issue in that prior adjudication. *See Kremer*, 456 U.S. at 480-81 & n. 22, 102 S.Ct. at 1896-97 & n. 22; *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329-33, 99 S.Ct. 645, 650-53, 58 L.Ed.2d 552 (1979); *Blonder-Tongue Labs, Inc. v. University of ILL. Found.*, 402 U.S. 313, 329, 91 S.Ct. 1434, 1443, 28 L.Ed.2d 788 (1971).

Williams, Jr.,: Alabama courts, in accordance with general principles of law, require that before one may be bound by a determination in a prior suit he or she must have had (or been in privity with one who had) "an interest sufficiently close to the matter litigated and . . . an adequate opportunity to litigate the issue in the prior proceeding." *Owen*, 414 So.2d at 891 (non-party to proceeding who was present and testified at that proceeding bound by outcome). Of importance is whether the "party" against whom estoppel is asserted had an opportunity to make an argument regarding the issue litigated, so that his or her interest in the matter was passed upon in the court's prior disposition *See id.* at 891-92. For purposes of preclusion,

> Alabama courts recognize that certain persons, *although not officially named or brought before the court, should be treated as parties* and go beyond the record to include those persons who took part in the trial . . . The rationale . . . is that the nonparty, in actuality, had a fair opportunity to litigate his interest in the issue in the first action.

Commentary, 32 Ala.L.Rev. at 519 (emphasis added; internal footnotes omitted). *See Hudson v. Wright*, 164 Ala. 298, 51 So. 389, 391 (1909) (court "will look beyond the record and treat *as parties* all who in fact are found to have acted a part . . . whether their interference was irregular or not") (emphasis added); *Moody v. Moody*, 339 So.2d 1030, 1034 (Ala.Civ.App.) (same), *cert denied*, 339 So.2d 1035 (Ala.1976). As to Williams, Jr., this is satisfied here.

Williams, Jr., Wesley Rose and Roy Acuff instituted the state court action that culminated in the *Gulf American* decision. The issue of paternity litigated in the trial court in that action was resolved in favor of Stone. This record, and a *priori*, Williams, Jr.'s contentions, were before the *Gulf American* Court. That Williams, Jr. was not officially named as a party is not dispositive on the question of whether his interests were known to and considered by the Alabama Supreme Court. *See Owen*, 414 So.2d at 891-92; *Hudson*, 51 So. at 391; *Moody*, 339 So.2d at 1033-34.

Gulf American regarded Stone's third-party complaint seeking to reopen the estate as an action *in rem*, "not essentially different from the prayer of Williams, Jr., for relief in his declaratory judgment action." 554 So.2d at 373. Thus, it held "the claims of the various parties [were] so intertwined and the factual situation so unique that notions of fairness require[d] that the entire controversy be settled in one proceeding." *Id.* at 374. This included Williams, Jr.'s interests. *See id. See also City of Tuscaloosa v. Fair*, 232 Ala. 129, 167 So. 276, 282-83 (1936) (where defendants' interest are not separate and independent, reversal of verdict as against one requires reversal of otherwise valid verdict against the other). The Alabama Supreme

Court explicitly noted "the position advanced by Williams, Jr., that Stone was not an 'heir' was adequately presented." 554 So.2d at 375. Since Alabama's highest court has effectively determined that Williams, Jr. is properly bound by its decision, we may not conclude otherwise. *See Kremer,* 456 U.S. at 481-82, 102 S.Ct. at 1897-98 (§ 1738 does not allow federal courts to employ their own rules in determining the preclusive effect of state court judgments; federal court is commanded to accept the rules chosen by the state from which the judgment is taken).

Williams, Jr. further insists that the Alabama Supreme Curt was not a court of competent jurisdiction, and therefore its judgment is not entitled to preclusive effect. This argument derives from the fact that under Alabama law, the failure to file an appeal is *jurisdictional. See, e.g., Threadgill v. Birmingham Bd. of Educ.,* 407 So.2d 129, 131-32 (Ala.1981); *Stewart v. Younger,* 375 So.2d 428 (Ala.1979) (per curiam). It is thus argued that Stone's failure to appeal the grant of summary judgment in favor of Williams, Jr. deprived the Alabama Supreme Court of jurisdiction over him, which was required in order to pass on the question of whether Stone was entitled to a share of Williams, Sr.'s estate. Again, *Gulf American* decided it had *in rem* jurisdiction to determine whether Stone was entitled to share in the estate. *See* 554 So.2d at 371-75. In deciding that Stone was entitled to share, it necessarily adjudicated paternity and concluded it had jurisdiction over the parties affected by the judgment. *See id; see also City of Huntsville v. Goodenrath,* 13 Ala.App. 579, 68 So. 676, 682 (judgment *in rem* is conclusive with

respect to matters upon which such judgment is necessarily founded), *cert. denied,* 194 Ala. 568, 69 So. 629 (1915).

Because a court's adjudication is conclusive only if it had power to pass on the merits of the action, *see Underwriters Nat'l Assurance,* 455 U.S. at 704-05, 102 S.Ct. at 1365-66; *Williams v. North Carolina,* 325 U.S. 226, 229, 65 S.Ct. 1092, 1094-95, 89 L.Ed. 1577 (1945), one may collaterally attack the subject matter or *in personam* jurisdiction of the court rendering a judgment put forth as preclusive. *See, e.g., Treinies v. Sunshine Mining Co.,* 308 U.S. 66, 78, 60 S.Ct. 44, 50, 84 L.Ed. 85 (1939). Nonetheless, principles of preclusion apply equally to jurisdictional matters. *Id.; Underwriters Nat'l Assurance,* 455 U.S. at 706 & n. 13, 102 S.Ct. at 1367 & n. 13. Consequently, our function is not to decide *de novo* the question of the rendering court's jurisdiction, but rather merely to ask whether "those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." *Durfee v. Duke* 375 U.S. 106, 111, 84 S.Ct. 242, 245, 11 L.Ed.2d 186 (1963). *See Williams,* 325 U.S. at 230, 65 S.Ct. at 1095; *see also Underwriters Nat'l Assurance,* 455 U.S. at 706-08 & n. 15, 102 S.Ct. at 1366-68 & n. 15 (any doubts over whether first court purported to exercise subject matter and/or personal jurisdiction definitively settled by that court's subsequent decision on petition for instructions). *Gulf American* purported to exercise jurisdiction over the subject matter of the estate and over Williams, Jr. In light of the character of the dispute and its discussion of the matter on the Application for Rehearing, the issue was fully and fairly decided. *Cf. Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313, 70

S.Ct. 652, 656, 94 L.Ed. 865 (1950) (whether due process afforded turns in part on "the nature of the case").

Any challenge to the Alabama Supreme Court's jurisdiction – whether *in personam* or subject matter – once adequately addressed and determined by that court, lay only on direct review. *See Underwriters Nat'l Assurance*, 455 U.S. at 708-09 n. 15, 102 S.Ct. at 1367-68 n. 15; *Treinies*, 308 U.S. at 77 & n. 21, 60 S.Ct. at 50 & n. 21. *Cf. Hedrick v. Grimes Motor Co.*, 275 Ala. 322, 154 So.2d 677, 681 (1963); *see also* Restatement (Second) Conflict of Laws §§ 96, 97, (1969). Since the United States Supreme Court denied Williams, Jr.'s petition for certiorari, he may not now collaterally attack the jurisdictional aspects of the *Gulf American* decision any more than he may attack it on the merits. *See generally* D. Dobbs, *The Validation of Void Judgments: The Bootstrap Principle, Part II – The Scope of Bootstrap*, 53 U.Va.L.Rev. 1241, 1241-44 (1967).

The same reasoning applies to Williams, Jr.'s due process contentions that were also addressed in *Gulf American*. *See* 554 So.2d at 371; *Williams v. Adkinson*, 792 F.Supp. 755 (M.D.Ala.1992) (dismissing for lack of federal jurisdiction Williams, Jr.'s action against Stone and state court trial judge presiding over remand in *Gulf American* suit, concluding that Williams, Jr.'s federal claims were "inextricably intertwined" with his state claims presented to, and rejected by, Alabama Supreme Court). *See also Kremer*, 456 U.S. at 481, 102 S.Ct. at 1897 (state proceedings need do no more than satisfy the minimal procedural requirements of due process to qualify for full faith and credit). Thus, *Gulf American* is valid for purposes of preclusion and Williams, Jr. is a "party" bound thereby.

Other Defendants: Neither the Berlin nor the other Acuff/Rose defendants were involved in the third-party action leading to *Gulf American* and consequently may only be bound by findings of fact made in that case if they are found to be (or, more properly, if an Alabama court would find them to be) in privity with a party bound by such findings. "Privity," as used in Alabama for purposes of preclusion, encompasses a non-party whose "interests were adequately represented by a party in the prior suit, and [whose] relationship [with the party to the prior suit] is not so attenuated as to violate due process." *Whisman v. Alabama Power Co.*, 512 So.2d 78, 82 (Ala.1987). *See* Commentary, 32 Ala.L.Rev. at 521 (recent tendency of Alabama courts is to analyze privity as an identity of interests). We think the relationship of the other defendants vis-a-vis Williams, Jr. satisfies this test.

The Alabama courts generally have given final judgments broad preclusive effect:

> Judgments can bind persons not party (or privy) to the litigation in question where the nonparties' interests were represented adequately by a party in the original suit. . . . A person may be bound by a judgment even though not a party to a suit *if one of the parties to the suit is so closely aligned with his interests as to be his virtual representative.*

Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n, 401 So.2d 764, 770 (Ala.1981) (plurality opinion) (emphasis added). The term "privity" is used to encompass both those who share successive or mutual relationships to rights of property, and those who have an identity of interest in the subject matter of the litigation.

See, e.g., Sosebee v. Alabama Farm Bureau Mut. Casualty Ins. Co., 56 Ala. App. 334, 321 So.2d 676, 678 (Ala.Civ.App. 1975). As used in the cited passage, the term denotes the former class of nonparties which may be bound by a prior adjudication. Whether a nonparty has an "identity of interests in the subject matter of [the prior] litigation" as did a party, so as to be considered a privy bound thereby, "turns on whether the relationship between the parties [is] close enough." *Hughes v. Martin*, 533 So.2d 188, 191 (Ala.1988) (per curiam) (quoting Commentary, 32 Ala.L.Rev. at 520-21). Thus, the question is whether the interests of the other defendants are sufficiently identical to the interests of Williams, Jr. – on the issue of Stone's paternity – and the defendants' relationship is close enough so as to conclude that those interests were adequately represented in the *Gulf American* litigation.

Century 21 is instructive. That case involved a challenge to an Alabama regulation concerning franchise advertising brought by certain real estate franchisees. The Alabama Real Estate Commission and its members, as defendants claimed that a former federal court adjudication upholding the regulation was *res judicata*, as identical issues were raised. Despite the fact that the prior federal court litigation was brought by other franchisees, it was held that plaintiffs were bound by the prior decision. 401 So.2d at 770. Although the plaintiffs in the two actions were not identical, they were "substantially identical" and the present plaintiffs' "rights . . . were adequately represented in the federal litigation [in] that identical parties in interest" litigated the question previously. *Id.*

The other defendants and Williams, Jr. are likewise "identical parties in interest" in relation to the issue as to

which preclusion is asserted. The issue presented by the *Century 21* plaintiffs was precisely the same as that asserted by the plaintiffs in the prior federal court action – the validity of the Alabama regulation. Their interests – as real estate franchisees – were legally identical to those of the prior plaintiffs. And the state and federal court plaintiffs had a sufficiently close relationship to warrant binding both by the prior adjudication. So here. The issue contested by the defendants – Stone's paternity – is identical to that litigated by and determined against Williams, Jr. Their legal interest – the maintenance of the *status quo* concerning who is entitled to a share, whether it be in the estate as a whole or in copyright renewals specifically, in the legacy of Williams, Sr. – is identical as well. *Cf. Hughes*, 533 So.2d at 190-91 (joint tort-feasors have substantially identical legal interests for purposes of preclusion on question of negligence). Hence, Williams, Jr. and the remaining defendants have a sufficiently close relationship to warrant binding the latter by the prior adjudication. *See Southwest Airlines Co. v. Texas Int'l Airlines*, 546 F.2d 84, 95, 98 (5th Cir.) ("privity" denotes legal conclusion that the relationship is sufficiently close to afford application of the principle of preclusion; preclusion is appropriate as to those whose interests were represented adequately by a party in the original suit where the original party represented the only legal interests held by second party), *cert. denied*, 434 U.S. 832, 98 S.Ct. 117, 54 L.Ed.2d 93 (1977). Whatever adverse legal interests the Acuff/Rose and Berlin defendants may have *inter sese*, their legal interest concerning Stone's claimed paternity is identical.

Defendants assert that preclusion is nonetheless inappropriate as to them because the "subject matter" of the prior adjudication was Stone's ability to share in Williams, Sr.'s estate. Here the "subject matter" is Stone's ability to claim renewal copyrights in Williams, Sr.'s compositions. This distinction has only superficial appeal – the question is not whether the subject matter of the suits is identical, but whether the parties have an identical interest in that subject matter. *Cf. Owen*, 414 So.2d at 891. *The Gulf American* suit centered on Stone's ability to inherit from Williams, Sr. Her entitlement to copyright renewals, in turn, depends on her ability to inherit. *See infra*, at 1064-67. It is therefore no answer to say that the defendants other than Williams, Jr. claim no interest in the estate, as such, of Williams, Sr. To stress the distinction in the subject matter of the two suits elevates form over substance. *Cf. Alabama Farm Bureau Mut. Casualty Ins. Co. v. Moore*, 349 So.2d 1113, 1115-16 (Ala.1977) (insured and insurer do not have identity of interests in defending tort action where for insurer to protect its own interests would result in increasing insured's liability). In terms of its legal effect on Stone's entitlement to copyright renewals, her suit asserting a claim to Williams, Sr.'s estate is "identical." Further, as already pointed out, the legal interests of the other defendants and Williams, Jr. on the question of Stone's paternity are identical.

In sum, Williams, Jr. and the remaining defendants have parity of interests in the subject mater of the prior litigation – Stone's ability to inherit from Williams, Sr. *See Southwest Airlines*, 546 F.2d at 100 n. 58 (crucial factor is congruence of legal interest); *see also* A. Vestal, *Preclusion/ Res Judicata Variables: Parties*, 50 Iowa L.Rev. 27, 45, 60

(1964) (emphasis in privity analysis is upon the policy of ending litigation where there has been a fair trial of one's interests; preclusion appropriate where party in second suit has no greater interest than did participant in first suit). Accordingly, these defendants are bound as is Williams, Jr. by the prior adjudication of this issue.

3. *Due Process Concerns*

Defendants argue that due process bars the application of preclusion to them on the question of Stone's status as a biological child of Williams, Sr. It is true that a judgment will not be given preclusive effect if " 'the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court.' " *Haring v. Prosise*, 462 U.S. 306, 313, 103 S.Ct. 2368, 2373, 76 L.Ed.2d 595 (1983) (quoting *Allen*, 449 U.S. at 101, 101 S.Ct. at 418). But this principle is of no avail to these defendants. They are bound by *Gulf American* not because they were parties, but because they are in "privity" with a party. A privy is one who did not itself litigate the issue decided in the first proceeding. *See* Vestal, 50 Iowa L.Rev. at 60; *cf.* Restatement (Second) of Judgments § 41(2) (1980). But this is not violative of due process. *Cf. Martin v. Wilks*, 490 U.S. 755, 763, 109 S.Ct. 2180, 2185, 104 L.Ed.2d 835 (1989) (unless duly summoned to appear, " 'a person *not a privy* may rest assured that [the] judgment . . . will not affect his legal rights' ") (quoting *Chase Nat'l Bank v. Norwalk*, 291 U.S. 431, 441, 54 S.Ct. 475, 479, 78 L.Ed. 894 (1934)) (emphasis added); *Parklane Hosiery*, 439 U.S. at 327 n. 7, 99 S.Ct. at 649 n. 7 (due process violated if judgment

binding on a litigant who was not a party *or in privity* and therefore never had an opportunity to be heard).

Due process does not protect the ability of one not a "stranger[] to [a prior] proceeding[]" subsequently to bring suit or go to trial, but rather protects that party's right to have his or her legal interests presented to and considered by a court of competent jurisdiction in adjudicating matters that will impact upon those legal interests. *See Martin*, 490 U.S. at 762 & n. 2, 109 S.Ct. at 2184 & n. 2; *Southwest Airlines*, 546 F.2d at 102. *Cf. Hansberry v. Lee*, 311 U.S. 32, 44-5, 61 S.Ct. 115, 119-20, 85 L.Ed. 22 (1940) (due process not satisfied where those allegedly in privity with party in prior suit had potentially conflicting interests). In order to foster finality and respect for judicial decisions, due process cannot be held to require matters that have already been considered by a court of competent jurisdiction to be passed upon again at the behest of one whose legal interests were fairly represented in the prior proceeding.

In the end, estoppel determinations turn on the court's sense of justice and equity. *Blonder-Tongue*, 402 U.S. at 334, 91 S.Ct. at 1445. Considering the countervailing interests at stake, *see Lalli v. Lalli*, 439 U.S. 259, 268, 99 S.Ct. 518, 524, 58 L.Ed.2d 503 (1978) (plurality opinion) (states have strong interest in determining disposition of property at death), and the equities at hand, we do not believe it fundamentally unfair or incompatible with notions of justice or due process to bind defendants by *Gulf American's* findings of paternity. *Cf. Gray v. Richardson*, 474 F.2d 1370, 1372-73 (6th Cir.1973) (in action for entitlement to social security benefits, Secretary of

Health, Education and Welfare should accept determination of paternity previously made by state court of competent jurisdiction in suit litigated by parties with opposing interests). *See also* Restatement (Second) of Judgments § 31 cmt. b (1980) (in the absence of "strongly countervailing interests" the determination of status in a proceeding for that purpose is conclusive on all persons). In short, the unique character of this case and the relationship between Williams, Jr. and the remaining defendants that justify classifying them as "privies" are sufficient to withstand a due process challenge.

III Copyright Renewals

We have thus concluded that plaintiff's action is not barred by the statute of limitations and that defendants may not challenge the determination of the Alabama Supreme Court that Stone is the natural child of Williams, Sr. Defendants nonetheless contend that Stone is not entitled to a share of copyright renewals. Although this question was not passed upon by the district court we address it because the facts are undisputed and the legal question presented in this seven-year-old litigation has been fully briefed by the parties.

Both § 24 of the 1909 Act, as amended, and § 304(a) of the 1976 Act state that if the author is not living when the original copyright term expires, then the author's "widow, widower, or children" shall be entitled to the copyright renewal. The 1909 Act governs Stone's entitlement to copyright renewals for works already in their renewal term as of January 1, 1978, the effective date of the 1976 Act. The 1976 Act governs Stone's entitlement to

copyright renewals for previously copyrighted works not yet in their renewal term as of January 1, 1978. *See* B. Ringer, "Renwal of Copyright," *Studies on Copyright* 503, 577 (1960). Under the 1909 Act copyrights are entitled to a 28-year renewal term, and the 1976 Act provides an additional 19-year renewal term. *See* 17 U.S.C. § 304(b). For copyrights subsisting under the 1909 Act in their original term as of January 1, 1978, upon expiration of the 28-year original term, the copyright may be renewed for an additional 47 years. *Id.* § 304(a). *See Generally* 2 Nimmer, § 9.01[C], at 9-18-21.

For works copyrighted after January 1, 1978 statutory protection extends for a continuous term equal to the life of the author plus 50 years, 17 U.S.C. § 302(a), with a right of termination, *Id.* § 203, designed to provide for the continuing support of an author and his or her dependents by allowing them to avoid the harshness of earlier unremunerative transfers. *See* 3 Nimmer § 11.01, at 11-2-3. The termination right also extends to the "new" 19-year renewal term for works copyrighted under the 1909 Act, whether renewal was registered under the 1909 or 1976 Act. *See* 17 U.S.C. § 304(c). *See also Larry Spier, Inc. v. Bourne Co.*, 953 F.2d 774, 778 (2d Cir.1992) (§ 304(c) is designed to protect property rights of widows and children in copyrights). Some of Williams, Sr.'s works are subject to the 47-year renewal period under the 1976 Act, others to the 28/19-year period under the 1909/1976 Act "merger."

A. *The 1909 Act*

Defendants' position is that even if Stone is a natural child of Williams, Sr., she is not a "child" for purposes of either the 1909 or 1976 Acts. The 1909 Act did not define

"child" for purposes of determining the class of beneficiaries entitled to claim renewal copyrights under § 24. In *De Sylva v. Ballentine*, 351 U.S. 570, 76 S.Ct. 974, 100 L.Ed. 1415 (1956), the Supreme Court held that whether an illegitimate child is entitled to copyright renewals is to be determined according to state law. *Id.* at 580-81, 76 S.Ct. at 979-80. The Court noted that Congress' aim in awarding an author's "widow, widower or children" copyright renewals was to provide for them after the author's death. *Id.* at 582, 76 S.Ct. at 980-81; *See also Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U.S. 643, 650-51, 63 S.Ct. 773, 776-77, 87 L.Ed. 1055 (1943) (discussing purpose of 1831 Act, 4 Stat. 436, which, for the first time, provided for passing of renewal term to author's widow or children if author failed to survive to renewal). Thus, as to those persons designated as beneficiaries under the statute, it "is really a question of the descent of property, and . . . the controlling question under state law should be whether the child would be an heir of the author" entitled to claim under intestacy statutes. *De Sylva*, 351 U.S. at 582, 76 S.Ct. at 980-81.

There is no dispute that Alabama law – as Williams, Sr.'s domicile at his death – governs whether Stone is entitled to claim as an heir. Nor is there any dispute as-to *what* the law of Alabama provides concerning intestate distribution to illegitimate children. Rather, the issue is *which* Alabama law concerning intestate distribution to illegitimate children controls.

Defendants urge that Stone's right to renewals under the 1909 Act must be assessed by Alabama law in effect as of January 1, 1978. Prior to 1979 Alabama provided for inheritance by an illegitimate child through its father

only if 1) the parents were later married and the father recognized the child, or 2) there was a written declaration by the father, attested by two witnesses, and filed with the judge of probate. *Gulf American*, 554 So.2d at 364; *see also Everage v. Gibson*, 372 So.2d 829, 833 (Ala.1979) (adding as third avenue an adjudication of paternity), *cert. denied*, 445 U.S. 931, 100 S.Ct. 1322, 63 L.Ed.2d 765 (1980). Since Stone meets neither of these conditions, defendants insist, she is not an heir under Alabama law as it existed in 1978 and therefore is not entitled to copyright renewals. In other words, though the fraud perpetrated on Stone prevented her from asserting her rights until 1979, her entitlement must be assessed under the law in existence while she was being victimized. We are unable to adopt this reasoning. *Compare Jerry Vogel Music Co. v. Edward B. Marks Music Corp.*, 425 F.2d 834, 836 (2d Cir.1969) (Friendly, J.) (because prior transactions had been carried out *in good faith without knowledge* that illegitimate child might have claim to renewal copyrights, current law should not be applied); *Collier v. Shell Oil Co.*, 534 So.2d 1015, 1018 (Miss.1988) (*bona fide* purchasers for value not subjected to divestment of title by virtue of change in law regarding inheritance rights of illegitimate children).

As a general rule, a court must apply the law regarding intestate succession as it exists when the case comes before it for decision. *See Reed v. Campbell*, 476 U.S. 852, 856, 106 S.Ct. 2234, 2237, 90 L.Ed.2d 858 (1986) (law to be applied concerning illegitimate child's ability to inherit is that governing at time claim to decedent's estate is made – when court required to make a decision). *See also Everage*, 372 So.2d at 833-834 (applying law regarding

illegitimate child's ability to inherit in effect at time of decision). Not until 1979 could the question of Stone's entitlement to a share of Williams, Sr.'s estate properly – that is, not clouded by fraud and incomplete information – come before the Alabama courts. We are not faced with the "retroactive" application of a "new" law because there never was a fair application of the "old" law.

Once the Alabama Supreme Court determined that Williams, Sr.'s estate should be reopened, 554 So.2d at 352-63, it applied current Alabama law, and concluded Stone was an heir entitled to inherit. *Id.* at 367 & n. 23. *See Cotton v. Terry*, 495 So.2d 1077, 1079 (Ala.1986) (per curiam) (paternity of illegitimate child may be established after the death of the father if supported by clear and convincing evidence). Because Stone's entitlement to copyright renewals under the 1909 Act turns on her ability to inherit under state intestacy law, *De Sylva*, 351 U.S. at 580-82, 76 S.Ct. at 979-81, and since the interpretation of a state's laws by that state's highest court is binding on us, *see, e.g. Groppi v. Wisconsin*, 400 U.S. 505, 507, 91 S.Ct. 490, 491, 27 L.Ed.2d 571 (1971); 28 U.S.C. § 1652, plaintiff is entitled to an appropriate share of copyright renewals for copyrights renewed under the 1909 Act. It would be anomalous and contrary to the state-law approach of *De Sylva* to hold that though Stone is entitled to a share of Williams, Sr.'s estate, she is not entitled to a share of copyright renewals.

Not surprisingly, the Berlin defendants object to what they see as the retroactive application of a statute to determine membership in the closed class of persons entitled to an interest in the 1909 Act renewal copyrights. But their argument rests on a faulty premise – this is not a

case of a *subsequent statutory provision* being utilized to determine membership in a "closed" class. Rather, here the class was found to be improperly, *i.e.*, not yet, closed. Moreover, this finding was not based on a subsequent law redefining who should be in the class, but instead on the *fraud* perpetrated in originally determining which persons were in the class. Once reopened, the new law was properly "utilized" to determine membership in the now open class of those entitled to share. *Cf. Reed*, 476 U.S. 856, 106 S.Ct. at 2237; *Collier*, 534 So.2d at 1018.

The Acuff/Rose defendants similarly insist that the Alabama Court improperly applied *Trimble v. Gordon*, 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977) (invalidating on equal protection grounds probate law allowing illegitimate children to inherit through their fathers only if parents subsequently married and father acknowledged child) retroactively as a wedge to reopen Williams, Sr.'s already closed estate thereby giving Stone a chance to qualify as an heir. The Alabama Court, defendants continue, then created a duty of disclosure based on Stone's possible heirship, which it found breached by a legal fraud.

The reasoning misreads *Gulf American*. Its finding of a "legal duty underpinning the determination of legal fraud" had nothing to do with the ability of an illegitimate child to inherit under present law as opposed to then-existing law. Rather, in addressing Stone's claim that there had been a conspiracy "to keep certain facts relating to her existence, identity, and potential claim to the estate of Hank Williams concealed from the court," the Court found

> substantial evidence from which a factfinder could conclude that third-party defendants Robert Stewart and administratrix Irene Smith and other withheld from the court before and during the 1967 and 1968 proceedings material facts concerning the issue of Stone's *paternity*.

554 So.2d at 352 (emphasis added). The legal duty to disclose such information was based on the fact that

> both Stewart and Smith had a legal obligation, *as either the attorney or administrator of the estate or because of the particular circumstances involved,* to advise the court at the earliest possible date that the Stone child existed and possessed potential claims to the estate as an heir, being a natural child of the deceased . . . *Because the corpus of the estate involved copyright renewals, and because illegitimates could share in such rights under federal law, the "particular circumstances" of this case make the obligation a weightier one.* The evidence shows that Stewart, as administrator, and as attorney for Smith, knew that the child had a substantial claim to the copyright renewals. . . . We cannot say that Smith's and Stewart's concealment did not affect the judgments ultimately rendered in the 1967 and 1968 proceedings . . .

Id. at 359-60 (second emphasis in original).

The first italicized statement lays out the legal duty which was breached. The second italicized statement does not go to the *existence* of the duty to disclose, but rather, quite plainly, to its weight. This weight, moreover, stemmed from the law *as it existed in 1967 and 1968*. At that time *De Sylva* made quite clear that illegitimate children *could* share in copyright renewals. This is all *Gulf*

American stated. *See also supra*, n. 1. Contrary to defendants' suggestion, the duty upon which the finding of fraud was based was a duty existing and as defined in 1967 and 1968, not a duty as defined in 1979 and then applied retroactively to the 1967 and 1968 proceedings.

De Sylva directs federal courts to assess entitlements to copyright renewals under § 24 by reference to state intestacy law. In determining Stone's entitlement to Williams, Sr.'s estate the Alabama Supreme Court applied present law. Under present Alabama law, Stone may inherit from Williams, Sr.'s estate because she is a natural child who was not "adopted-out" at the time of his death. *Gulf American*, 554 So.2d at 368-69. *See also Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 403 F.Supp. 420, 429 (M.D.Tenn.1975) (status as "widow" entitled to copyright renewals is indefeasibly vested at moment of author's death and not affected by subsequent remarriage), *aff'd*, 570 F.2d 554 (6th Cir. 1978); 17 U.S.C. § 101 (definition of "widow" and "widower"). As a result, Stone is entitled to a share of copyright renewals under § 24 of the 1909 Act.

B. *The 1976 Act*

As to works copyrighted prior to January 1, 1978 but which did not come into their renewal term until after that date, the determination of whether one is a "child" entitled to claim such renewals under § 304(a) involves somewhat different considerations. Although § 304(a), like § 24, provides that an author's "widow, widower or children" are entitled to copyright renewals, unlike the 1909 Act, § 101 of the 1976 Act defines children: "A person's 'children' are that person's immediate offspring,

whether legitimate or not, and any children legally adopted by that person."

Defendants assert that by adding a definition of children Congress planned that the determination of one's status as a child, including for purposes of an entitlement to copyright renewals, would be a matter of federal law, supplanting the state law approach taken in *De Sylva*. Defendants further insist that the light of the purposes of copyright renewals – to provide support for an author's dependents – adopted-out children, such as Stone, should not be entitled to such renewals.

We do not think § 101 commands a uniform federal definition of "children" for purposes of copyright renewals under § 304(a). Concededly, Congress added the definition in § 101 so that "[t]he terms 'widow,' 'widower,' and 'children' [would be defined so as] to avoid problems and uncertainties that have arisen under the [1909 Act's] renewal section." H.R.Rep. No. 1476, 94th Cong., 2d Sess. 125, *reprinted in* 1976 U.S.Code Cong. & Admin.News 5659, 5741. This statement was made in discussing the termination provision that provides that a dead author's termination interest is owned and may be exercised by "his widow or her widower and his or her children or grandchildren." 17 U.S.C. § 203(a)(2). Significantly, "no reference is made to these statutory definitions in the House Report commentary upon § 304(a)." 2 Nimmer § 9.04[A][2], at 9-50. *See Larry Spier*, 953 F.2d at 779 (sections 203 and 304 involve different rights; references to legislative history discussing § 203 are therefore inappropriate in construing § 304). To the contrary, the legislative history explicitly states that § 304(a)

> reenacts and preserves the renewal provision, now in section 24 of the [1909 Act], for all of the works [as of January 1, 1978] in their first 28-year term. A great many of the present expectancies in these cases are the subject of existing contracts, and it would be unfair and immensely confusing to cut of *or alter* these interests. . . . [T]he bill preserves the language of the [1909] renewal provision *without any change in substance.*

H.R.Rep. No. 1476, 94th Cong., 2d Sess. 139, *reprinted in* 1976 U.S.Code Cong. & Admin.News 5659, 5755 (emphasis added). *See also Frederick Music Co. v. Sickler,* 708 F.Supp. 587, 589 (S.D.N.Y.1989) (there is no pertinent distinction in language or intention between §§ 304(a) and 24); *Saroyan v. William Saroyan Found.*, 675 F.Supp. 843, 845 n. 7 (S.D.N.Y.1987) (§ 304(a) reenacted § 24 without substantive change), *aff'd mem.*, 862 F.2d 304 (2d Cir.1988).

The reason for this is plain. Congress recognized that a number of agreements had been entered into concerning renewal copyrights for works copyrighted under the 1909 Act at the time the 1976 Act went into effect. *See* H.R.Rep. No. 1476, 94th Cong., 2d Sess. 139-41, *reprinted in* 1976 U.S.Code Cong. & Admin.News 5659, 5755-57. Because these agreements were made in light of *De Sylva* as to who would be entitled to copyright renewals, it would have created problems for persons acting in reliance on such agreements were the rules regarding entitlement changed. *See id. See also Mills Music, Inc. v. Snyder,* 469 U.S. 153, 170-72, 105 S.Ct. 638, 648-49, 83 L.Ed.2d 556 (1985) (Congress enacted 1976 Act with an awareness of industry practice). Hence, any congressional

aim to implement a new federal policy regarding "children" was held in abeyance for already-copyrighted works, and is relevant only for works copyrighted in the first instance under the 1976 Act. *Cf. Paige v. Banks*, 80 U.S. (13 Wall.) 608, 614-16, 20 L.Ed. 709 (1872) (assignee of rights to work copyrighted under 1790 Act entitled to renewal registered under 1831 Act despite intervening statutory change concerning ability of assignees to renew). As no such works are involved in the case at hand, we need not be concerned with whether Stone falls within § 101.

Our conclusion that state law delinates the scope of the property right granted by § 304(a) is reinforced by reference to the 1976 Act's scheme regarding the 19-year extension for renewals. This extended term "representes a completely new property right." H.R.Rep. No. 1476, 94th Cong., 2d Sess. 140, *reprinted in* 1976 U.S.Code Cong. & Admin.News 5659, 5756; *see Stewart*, 495 U.S. at 225, 110 S.Ct. at 1762. Because assignments and other agreements concerning renewals for works copyrighted under the 1909 Act were entered into under the assumption that the renewal term would run for only 28 years, Congress extended the termination power of § 203 (governing works copyrighted after January 1, 1978 and transfers made by the author) to § 304(c) (governing transfers made prior to January 1, 1978 by either the author or § 24 or § 304(a) beneficiaries). *See* H.R.Rep. No. 1476, 94th Cong., 2d Sess. 140-41, *reprinted in* 1976 U.S.Code Cong. & Admin.News 5659, 5756-57; *Stewart*, 495 U.S. at 224, 110 S.Ct. at 1762.

Although patterned after § 203, § 304(c) – governing who may exercise the termination privilege with respect

to grants covering the extended term of renewal copyright – "is a close but not exact counterpart." H.R.Rep. No. 1476, 94th Cong., 2d Sess. 140, *reprinted in* 1976 U.S.Code Cong. & Admin.News 5659, 5756. Most importantly, "[t]he bill distinguishes between the persons who can terminate a grant under section 203 and those entitled to terminate a grant covering an extended term under section 304." *Id.* Specifically, the power to terminate a grant covering the extended renewal term made by other than the author is held by those "surviving person or persons who executed it." 17 U.S.C. § 304(c)(1). *Compare id.* § 203(a)(2).

Although this termination privilege is applicable to renewals registered under either the 1909 or 1976 Act, it does not extend to transfers made by renewal beneficiaries after January 1, 1978. The only transfers concerning renewal copyrights made prior to January 1, 1978 were executed by beneficiaries as determined by state law. *See* H.R.Rep. No. 1476, 94th Cong., 2d Sess. 140, *reprinted in* 1976 U.S.Code Cong. & Admin.News 5659, 5756 (termination right in § 304(c) "extends to grants executed by those beneficiaries of the author *who can claim renewal under the present [i.e., 1909] law*") (emphasis added). Since these beneficiaries hold termination rights for renewals registered after January 1, 1978, and because it would be unworkable if the holder of a renewal was not the holder of the termination right concerning the same renewal, it must have been planned that beneficiaries of renewals registered under the 1976 Act be determined by state law. Hence, there is a distinction between those who can terminate a grant under § 203 (determined by § 101) and those who can terminate a grant covering the extended

term, *i.e.*, hold the renewal copyright (determined by state law).

In short, for renewals registered under either the 1976 or 1909 Act, the extended-term termination right may be exercised only by those who executed a grant of the underlying property right prior to 1978. Those that held that property right with respect to 1909 Act renewals (and such an expectancy for 1976 Act renewals) were determined by state law. The holder of the termination right must be the holder of the underlying property interest. Thus, as the holder of the termination right for renewals registered under the 1976 Act must be assessed by reference to state law, the holder of the renewal itself also must be assessed by state law.

Community for Creative Non-Violence v. Reid, 490 U.S. 730, 109 S.Ct. 2166, 104 L.Ed.2d 811 (1989), relied upon by defendants, is not to the contrary. *Reid* involved the interpretation of "work made for hire" in § 101 of the 1976 Act. As relevant here, the Court was faced with the question of whether the terms "employer," "employee" and "scope of employment" were to be given a uniform federal definition derived from the general common law of agency. *Id.* at 740, 109 S.Ct. at 2173. Noting that the "paramount goal" of the 1976 Act was to "enhance predictability and certainty of copyright ownership," *id.* at 749, 109 S.Ct. at 2177, the Court felt it "particularly appropriate" to establish a federal rule of agency. *Id.* at 740, 109 S.Ct. at 2173. As the above discussion demonstrates, in order to "enhance predictability and certainty of ownership" it is appropriate to retain the state-law approach to copyright renewals for works – unlike the one at issue in *Reid* – copyrighted under the 1909 Act.

We therefore hold that Stone is entitled to a share of copyright renewals under § 24 of the 1909 Act and under § 304(a) of the 1976 Act, despite having been adopted-out since "children" for purposes of both sections is defined by state law. There remains a question as to what precisely that share is. The Berlin defendants claim that children take as a class, so that Berlin takes one-half and Stone and Williams, Jr. each take one-quarter. The Acuff/Rose defendants and Stone argue that all beneficiaries share equally, so that Berlin, Williams, Jr. and Stone each take one-third. This issue, not addressed in the district court, is remanded to it for decision.

IV Second Cause of Action

Stone's second cause of action alleges that defendants Milene-Opryland, Acuff-Rose, Fred Rose, Milene, Roy Acuff and Wesley Rose conspired with Irene Smith and Robert Stewart to prevent disclosure concerning her existence and concomitant claim to the estate of Williams, Sr. The parties do not dispute that under Alabama law a conspiracy cause of action arises not from the conspiracy itself, but from the wrong alleged to be the object of the conspiracy. *Ellis v. Zuck*, 409 F.Supp. 1151, 1159 (N.D.Ala.1976), *aff'd*, 546 F.2d 643 (5th Cir.1977) (per curiam); *Stuart Constr. Co. v. Vulcan Life Ins. Co.*, 291 Ala. 650, 285 So.2d 920, 923 (1973). It is also agreed that Alabama recognizes a cause of action for fraudulent suppression of a material fact. *See* Ala.Code § 6-5-102 (1975). As relevant here the crucial element necessary to state a claim based on fraudulent suppression of a material fact is a duty to disclose. *See, e.g., Bank of Red Bay v. King*, 482 So.2d 274, 284 (Ala.1985).

Stone's contention that such a duty existed derives from our holding in *Shapiro, Bernstein & Co.*, 223 F.2d at 253, that the holder of legal title to a renewal copyright holds it as constructive trustee for other co-owners. In dismissing this count, the district court concluded that Stone had not shown defendants owed a fiduciary duty to her. In support of this ruling, defendants point out that a constructive trustee is not a fiduciary, *see, e.g., Rochester Radiology Assocs. v. Aetna Life Ins. Co.*, 616 F.Supp. 985, 988 (W.D.N.Y.1985); Restatement of Restitution § 160 cmt. a (1937), and claim that without such a relationship there is no duty to disclose, and that their silence is not therefore actionable.

The obligation giving rise to the duty to disclose "may arise from the confidential relations of the parties *or from the particular circumstances of the case.*" Ala.Code § 6-5-102 (1975) (emphasis added). *See Holdbrooks v. Central Bank of Ala.*, 435 So.2d 1250, 1252 (Ala.1983) ("special circumstances" may give rise to duty of disclosure). Hence, that defendants may not have owed a fiduciary duty to plaintiff is not itself dispositive. Alabama courts have expressly noted that § 6-5-102 " 'recognizes that situations *other than those involving fiduciary relationships may give rise to a duty to disclose.*' " *King*, 482 So.2d at 284-85 (quoting *Jim Short Ford Sales, Inc., v. Washington*, 384 So.2d 83, 86-87 (Ala.1980)) (emphasis added). Determining whether the "particular circumstances of the case" justify imposition of the requisite duty requires an *ad hoc* examination of the facts because "a rigid approach is impossible, and, indeed, the words of the statute itself counsel flexibility." *Id.* at 285. *Accord Berkel & Co. Contractors, Inc. v. Providence Hosp.*, 454 So.2d 496, 505 (Ala.1984).

Accordingly, in assessing whether a duty exists by virtue of the particular circumstances, a court must examine the fiduciary *or other* relationship of the parties, the importance of the particular fact, the relative knowledge of the parties, and other circumstances of the case. *See Bettis v. Bettis*, 475 So.2d 847, 852 (Ala.1985); *Hall Motor Co. v. Furman*, 285 Ala. 499, 234 So.2d 37, 41 (1970). No such analysis was undertaken here.

We agree that this controversy is of a "unique character." *Gulf American*, 554 So.2d at 369. Accordingly, we cannot affirm the dismissal of this court predicated, as it was, on the lack of a fiduciary relationship. This cause of action must therefore be remanded to the district court for a full consideration of whether, despite the lack of a fiduciary relationship, there nonetheless exited a duty on the part of defendants to disclose. We express no opinion on this ultimate question or on defendants' asserted alternative bases for dismissal.

CONCLUSION

The judgment appealed from is reversed, and the case is remanded for further proceedings consistent with this opinion.

APPENDIX A-2

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 18th day of September one thousand nine hundred and ninety-two.

CATHY YVONNE STONE,
Plaintiff-Appellant

v.

HANK WILLIAMS, JR.; BILLIE JEAN WILLIAMS BERLIN; CHAPPELL MUSIC COMPANY, a division of CHAPPELL & CO., INC., a Delaware Corp.; ABERBACH ENTERPRISES, LTD. a New York Corp.; ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee Corp.; MILENE OPRYLAND MUSIC, INC., a Tennessee [sic]; WESLEY H. ROSE & ROY ACUFF individually & as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., & Milene Music, Inc.; FRED ROSE MUSIC, INC., a Tennessee Corp.; & Milene Music Inc. a Tennessee Corporation,
Defendants-Appellees.

Docket No.: 91-7706
(Filed Sept. 18, 1992)

A petition for rehearing containing a suggestion that the action be reheard in [sic] banc having been filed

herein by counsel for Defendants-Appelles [sic], Hank Williams, Jr., Acuff-Rose-Opryland Music, Inc., Milene-Opryland Music, Inc., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc.,

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in [sic] banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

/s/ Elaine B. Goldsmith
ELAINE B. GOLDSMITH
Clerk

by: Illegible
Chief Deputy Clerk

APPENDIX B-1

Cathy Yvonne STONE, Plaintiff

v.

Hank WILLIAMS, Jr., Billie Jean Williams Berlin, Chappell Music Company, a Division of Chappell & Co., Inc., a Delaware Corporation, Aberbach Enterprises, Ltd., a New York Corporation, Acuff-Rose-Opryland Music, Inc., a Tennessee Corporation, Milene-Opryland Music, Inc., a Tennessee Corporation, Wesley H. Rose and Roy Acuff, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., Fred Rose Music, Inc., a Tennessee Corporation, and Milene Music, Inc., a Tennessee Corporation, Defendants.

No. 85 Civ. 7133 (JFK).

United States District Court,
S.D. New York

June 12, 1991.

Alleged illegitimate daughter of singer sued seeking declaration that she was a child of singer, within meaning of certain copyright statutes, and was entitled to share in renewal term of copyrights of singer's works. The District Court, Keenan, J., held that: (1) Alabama Supreme Court decision holding that claimant was daughter of singer was not entitled to res judicata or collateral estoppel effect, as parties were different from those in present suit; (2) daughter's claim was time barred; and (3) daughter did not state cause of action for conspiracy.

Case dismissed.

Rudin and Appel Beverly Hills, Cal. (Milton A. Rudin and Joseph L. Golden, of counsel) and Coblence, Warner,

Hamilton & Smith, New York City (Kenneth E. Warner, of counsel), for plaintiff.

Silverman & Shulman, P.C., New York City (Alan L. Shulman, Richard H. Frank, W. Michael Milom, and Christian A. Horsnell, of counsel), for defendants Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc.

McDermott, Will & Emery, New York City (Lawrence I. Fox and Stephen K. Rush, of counsel), for defendants Acuff-Rose-Opryland Music, Inc. and Milene-Opryland Music, Inc.

Thomas R. Levy, New York City, for defendants Billie Jean Williams Berlin Horton, Chappell Music Company and Aberbach Enterprises.

OPINION AND ORDER

KEENAN, District Judge:

Introduction

Before the Court are two motions for summary judgment arising out of a dispute over rights to interests in the renewal term of copyrights to the musical compositions of the late country music singer, Hank Williams, Sr. ("Williams, Sr."). The complaint of the plaintiff, the alleged illegitimate daughter of Williams, Sr., asserts two claims. First, she seeks a declaration that she is a child of Williams, Sr. within the meaning of certain copyright statutes, and that she is therefore entitled to a share in the renewal term of copyrights in Williams, Sr.'s works. Second, she asserts that certain of the defendants conspired

among themselves and with non-parties to prevent her from obtaining information that would have prompted her to commence this action at an earlier time.

Defendants in this action include members of Williams, Sr.'s family as well as current and past holders of copyright interests.[1] Two separate summary judgment motions arise from this group. One motion is brought by all defendants against plaintiff. A second summary judgment motion, called the "Aberbach Motion", is brought by defendants Aberbach Enterprises, Ltd. and Billie Jean Williams Berlin against plaintiff and all other defendants.

For the reasons discussed below, the principal motion is granted. The Court declines to reach the Aberbach motion.

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[1] Defendant Hank Williams, Jr. ("Williams, Jr.") is the son of Hank Williams, Sr. ("Williams, Sr."). Defendant Billie Jean Williams Berlin is the widow of Williams, Sr. Defendant Aberbach Enterprises, Ltd. is the assignee of Billie Jean Williams Berlin's interest in copyright renewals in Williams Sr.'s work. Defendant Chappell Music Company has a contractual relationship with defendant Aberbach Enterprises to serve as administrators of Billie Jean Williams Berlin's interests in the renewal term copyrights. Defendants Acuff-Rose-Opryland and Milene-Opryland Music are successors in interest to defendants Wesley H. Rose and Roy Acuff. Defendants Wesley H. Rose and Roy Acuff, in turn, served as trustees in liquidation of defendants Fred Rose Music, Inc. and Milene Music, Inc. Fred Rose Music, Inc. and Milene Music, Inc. were the assignees of Williams, Jr.'s interests in the copyrights renewal terms in Williams, Sr.'s work.

Background

On September 6, 1988, this Court granted defendants' motion for summary judgment and denied plaintiff's cross-motion for summary judgment. That decision, based upon the doctrine of laches, held that Stone had waited too long in bringing her claim. Stone appealed, and on April 21, 1989, the Court of Appeals for the Second Circuit affirmed this Court's decision. *See Stone v. Williams*, 873 F.2d 620 (2d Cir.1989). On August 24, 1989, the Second Circuit granted rehearing. On December 5, 1989, that court issued a new decision vacating its earlier decision, reversing this Court's dismissal on the basis of laches, and remanding the case for further proceedings. *See Stone v. Williams*, 891 F.2d 401 (2d Cir.1989).

The Second Circuit's change of heart was brought about by a decision of the Supreme Court of Alabama on an appeal brought by Stone in parallel litigation. On July 5, 1989, the Supreme Court of Alabama reversed a trial court's award of summary judgment to defendants, finding that defendants had intentionally, willfully and fraudulently concealed plaintiff's identity, existence, claim and rights as a natural child of Hank Williams, Sr. *See Stone v. Gulf American Fire and Casualty Co.*, 554 So.2d 346 (Ala. 1989). That decision also set aside 1967 and 1968 Alabama state court decrees that Stone was not an heir to Williams Sr.'s estate. The decision held that defendants' fraud excused plaintiff's delay in asserting her claim, and that therefore plaintiff had asserted her rights to the estate in a timely fashion. The Second Circuit ruled that the prejudice to the defendants that prompted this Court's application of the doctrine of laches would not have existed if the defendants had revealed facts of which they had

knowledge. "Consequently, the evidence of fraud, which the Alabama Supreme Court found persuasive, makes summary judgment dismissing plaintiff's claim on the grounds of laches inappropriate." *Stone v. Williams*, 891 F.2d 401, 405 (2d Cir.1989). In light of the Second Circuit's ruling, this Court now turns to another summary judgment motion, from which the issue of laches has been excluded.

Discussion

A. *Summary Judgment*

Fed.R.Civ.P. 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corporation v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). A motion for summary judgment may be granted under Rule 56 if the entire record demonstrates that "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Anderson v. Liberty Lobby*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). When viewing the evidence, the Court must "assess the record in the light most favorable to the non-movant and . . . draw all reasonable inferences in its favor." *Delaware & Hudson Railway Co. v. Consolidated Rail Corp.*, 902 F.2d 174, 177 (2d Cir.1990); *see Francis v. Coughlin*, 891 F.2d 43, 46 (2d Cir.1989). "Summary judgment is appropriate if . . . 'no reasonable trier of fact could find in favor of the non-moving party.'"

United States v. All Right, Title & Interest in Real Property, etc., 901 F.2d 288, 290 (2d Cir.1990) (quoting *Murray v. National Broadcasting Co., Inc.*, 844 F.2d 988, 992 (2d Cir.), *cert. denied*, 488 U.S. 955, 109 S.Ct. 391, 102 L.Ed.2d 380 (1988)). In making this determination, the district court may not resolve issues of fact; it may only ascertain whether such issues are present. *See Donahue v. Windsor Locks Bd. of Fire Cm'rs*, 834 F.2d 54, 58 (2d Cir.1987). The non-movant, in response to a properly supported motion for summary judgment, may not rest on the allegations in its pleadings, but must adduce "significant probative supporting evidence" demonstrating that a factual dispute exists. *Anderson*, 477 U.S. at 249, 106 S.Ct. at 2510-11.

B. *Effect of Alabama Decision*

The Court turns first to the effect on this action of the Alabama Supreme Court's decision in *Stone v. Gulf American Fire and Casualty Co.* Two days before plaintiff filed this action, defendants Hank Williams, Jr., Wesley Rose and Roy Acuff commenced an action in Alabama state court against plaintiff seeking a declaration that Stone was barred from establishing that she was the natural daughter of Williams, Sr. and from asserting any claim to his estate or for royalties from Williams, Sr.'s musical compositions. Plaintiff counter-claimed against Williams, Jr. to establish her status as a child of Williams, Sr. Plaintiff also filed a third-party complaint in which she alleged "an intentional, willful, fraudulent, and conspiratorial concealment from the court of her identity and potential claim to the estate of Hank Williams." *Stone v. Gulf American Fire and Casualty Co.*, 554 So.2d at 348. The defendants

in the third party action were Irene Smith, the sister of Williams, Sr. who at one time served as administratrix of the estate; the law firm of Robert Stewart, Esq., the lawyer for the estate who also served for some years as executor; several fictitiously named real parties in interest; and the insurance companies serving as sureties for the estate. In the third party action, plaintiff sought to have the estate reopened, to receive her share of the estate, and to be awarded punitive damages. Plaintiff also asked that the sureties for the estate compensate her for damages not recovered against the other third-party defendants or real parties in interest.

On July 14, 1987, the Alabama Circuit Court granted summary judgment to Williams, Jr., Acuff and Rose in their action against the plaintiff, holding that Williams, Jr. was the only heir of Williams, Sr. The court, while acknowledging that Cathy Yvonne Stone was the biological daughter of Williams, Sr., held that she was not entitled to inherit from his estate. Summary judgment was also granted to the third party defendants.

Stone appealed only the decision granting summary judgment to the third party defendants. On July 5, 1989, the Alabama Supreme Court, calling this a "unique case," ruled broadly on issues not placed before it directly by Stone's appeal of the third party action. *See Stone v. Gulf American Fire and Casualty Co.*, 554 So.2d 346 (Ala.1989). The court wrote as follows:

> "This Court is ever mindful of the policy concerns surrounding the finality of judgments. At the same time, we cannot ignore the pleas for relief of an innocent party who has labored under judgments procured by legal fraud and

> suppression, and based upon a completely erroneous view of the applicable law, at a time when she was not only a minor but had no one except a guardian ad litem fighting for her rights, and he was effectively foreclosed from establishing them."

Id. at 369.

The Court granted relief as follows:

> "In view of all of the evidence in this case relating to concealment by the attorney and the administratrix of the estate of Stone's claims to the estate and of facts material to those claims, in addition to the fact that the state agencies involved, as well as the court itself, failed to protect her rights, we cannot but conclude that equity and justice require that the 1967 and 1968 decrees rendered in this matter be set aside, in part. Accordingly, in order to balance all of the equities involved in this case, we hereby reverse the summary judgment on Stone's third-party claim in which she asked that the estate be reopened, and we order that the 1967 and 1968 judgments rendered in this matter be set aside, in part, and that Stone is entitled to receive her proportionate share of any proceeds of the estate of her natural father, Hank Williams, including any income or interest, and of any copyright royalties, but prospectively only, from the date that she gave notice of her claim, August 5, 1985. The trial court's judgment which, insofar as it denied her request for punitive damages against the third-party defendants, is affirmed."

Id. at 369-70

Because the Alabama Supreme Court decision affected his rights in the estate of his father, Williams, Jr. sought leave to appear to seek an order to vacate and modify the July 5 opinion. *See id.* at 371. Williams, Jr. sought to have the July 5 order vacated on the grounds that he was not a party to the appeal and that accordingly his due process rights were violated when the decision on that appeal impacted upon his rights in his father's estate.[2] Williams, Jr.'s application was denied. *See id.* at 375. The Supreme Court, focussing on Stone's application in the third party action to reopen the estate, stated that the third party action was an action in rem, and accordingly exercised jurisdiction over the estate. *See id.* at 373.

Defendants argue that the Alabama Supreme Court decision is constitutionally infirm and that accordingly it should not be afforded full faith and credit by this Court. They assert that no party to this action was a party to or in privity with a party to the third party appeal in Alabama. Defendants also point out that the United States Supreme Court has held clearly that it is a violation of due process rights for a judgment to be binding on a litigant who was not a party or a privy to the earlier

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[2] Williams, Jr. was not alone in that view. Two judges dissented from the denial of his application to be heard. "[We] think the Court's action violates the constitution of this state and the Constitution of the United States in that it directly affects property rights of Williams, Jr. that were vested, if not at the time the estate of Williams, Sr. was finally closed, then surely by the entry of final judgment in his favor in his declaratory judgment action, which this Court held was the proper way to finally determine whether Stone had an interest in the estate." *Stone v. Gulf American Fire and Casualty Co.*, 554 So.2d 346, 376.

proceeding. *See Parkland Hosiery v. Shore*, 439 U.S. 322, 327 n. 7, 99 S.Ct. 645, 649 n. 7, 58 L.Ed.2d 552 (1979). Williams, Jr. also contends that his due process rights were violated when he was denied an opportunity to be heard after the Alabama Supreme Court had decided the appeal of the third party action in a manner that impacted upon his rights. *See* Defendants' Memorandum at 73.

Defendants argue further that the decision of the Alabama Supreme Court should not be given any res judicata effect by this Court, insisting that the Alabama Supreme Court was not a court of competent jurisdiction to overrule unappealed decisions of the trial court. *See* Defendants' Memorandum at 78. Defendants contend that the Supreme Court did not have jurisdiction over issues which the parties had not placed before it by means of appeals of the lower court orders.

Plaintiff contends that either through collateral estoppel or res judicata analysis, the Alabama Supreme Court's decisions concerning the heirship and paternity of plaintiff "preclude all defendants from relitigating those issues in this action because they were either parties to the litigation in which the decisions were made or in privity with those parties." Plaintiff's Memorandum at 7. Plaintiff argues that under Alabama law, all of the parties to this action were parties to or privy to the Alabama action. *See* Plaintiff's Memorandum at 8-9.

The Court recognizes that normally it is required to give decisions of state courts the same preclusive effect as would be afforded under the laws of that state. *See Migra v. Warren City School Dist. Board of Education*, 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984); 28 U.S.C. § 1738.

However, "[i]n federal actions . . . a state-court judgment will not be given collateral-estoppel effect . . . where 'the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court." *Haring v. Prossie*, 462 U.S. 306, 313, 103 S.Ct. 2368, 2373, 76 L.Ed.2d 595 (1983). The same rule has been applied, correctly in the view of the Court, where res judicata has been invoked.[3] *See Robinson v. Arivoshi*, 753 F.2d 1468 (9th Cir.1985), *vacated* 477 U.S. 902, 106 S.Ct. 3269, 91 L.Ed.2d 560 (1986), *on remand* 887 F.2d 215 (9th Cir.1989). Because

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[3] Even if the Court had not applied the requirement of a full and fair opportunity to litigate to bar application of res judicata in this action, examination of Alabama law concerning res judicata indicates that the decision of the Alabama Supreme Court on Stone's appeal does not satisfy the requirements of Alabama law for application of res judicata. Under Alabama law, "[r]es judicata and collateral estoppel (estoppel by judgment) are two separate rules or sets of rules for determining the conclusiveness of judgments." *Wheeler v. First Ala. Bank of Birmingham*, 364 So.2d 1190, 1199 (Ala. 1978).

> "The elements of res judicata are as follows: (1) prior judgment rendered by court of competent jurisdiction; (2) prior judgment rendered on the merits; (3) parties to both suits are substantially identical; and (4) same cause of action present in both suits. If these elements are present, then the former judgment is an absolute bar to any subsequent suit on the same cause of action, including any issue which was or could have been litigated in the prior action.

Wheeler, 364 So.2d at 1199 (citations omitted).

In this case it is clear that the parties in this action and the parties before the Supreme Court on the third party appeal are not "substantially identical."

the Court concludes that the defendants in this action were not afforded a full and fair opportunity to litigate the issues actually decided by the Alabama Supreme Court, it would be inappropriate and unfair to grant preclusive effect to the Alabama Supreme Court decision, and the Court declines to do so.

Several factors have led the Court to the conclusion that defendants in this action were not afforded a full and fair opportunity to litigate the issues decided by the Alabama court. First, defendants in this action were not parties to the third party action in Alabama. While some of defendants in this action were plaintiffs in the primary Alabama action, none of the defendants here were involved in the third party action that ended up before the Alabama Supreme Court.

Second, the Court is unpersuaded by plaintiff's argument that the parties in this action are bound by the Alabama Supreme Court decision by reason of being in privity with litigants in the Alabama action. As plaintiff herself points out, Alabama courts have adopted more than one concept of privity:

> "The following three definitions of privity have appeared in Alabama cases: (1) the relationship of one who is privy in blood, estate, or law; (2) the mutual or successive relationship to the same rights of property; and (3) an identity of interest in the subject matter of the litigation. Largely defining privity by example, the Alabama cases seem to resolve the question on an ad hoc basis in which the circumstances determine whether a person should be bound by or entitled to the benefits of a judgment. The decision usually turns on whether the relationship

> between the parties was close enough and whether adequate notice of the action was received by the alleged privy; this test has been bolstered by the recent tendency of the Alabama courts to analyze privity as an identity of interests."

Hughes v. Martin, 533 So.2d 188, 191 (Ala. 1988) (quoted at Plaintiff's Memorandum in Opposition, 7-8). As discussed above, the parties to the third party action were two insurance companies, Gulf American Fire & Casualty and American States Insurance, Irene Smith, and Stewart's law firm. The Court cannot say that the defendants in this action, whose interests in this action are the renewal term copyrights, had either a sufficiently close relationship or an identity of interests with the defendants in the third party action to be in privity with them, and therefore bound by the Supreme Court's decision. The Court is aware that Stewart served as administrator of the Williams, Sr. estate. The Court is also aware that Irene Smith served both as administratrix of the estate and Williams, Jr.'s Alabama guardian during the 1967 and 1968 proceedings. The Court is unpersuaded that either of these facts result in Stewart and Smith being in privity with Williams, Jr. for purposes of this action. Both Stewart and Smith were named as parties to the third party action because of their alleged wrongful handling of the estate and their alleged personal wrongdoing in violating their fiduciary duties to the estate and its beneficiaries. In contrast, Williams, Jr. is a defendant not because he is directly accused of personal wrongdoing, but because his rights would be affected were this Court to grant plaintiff the relief that she requests. There is no allegation that Williams, Jr. participated in the alleged scheme that was

the basis of the third party action. In view of the different interests at stake in the two actions, it would be inappropriate and unfair to use the fact that Stewart and Smith once represented the interests of Williams, Jr. or the estate to bind Williams, Jr. to the results of the Alabama Supreme Court action. Third, Williams, Jr., Acuff and Rose did not attempt to protect their interests before the Alabama Supreme Court simply because they had no reason to become involved in the appeal of a third party action to which they were not parties. The trial court had granted summary judgment in their favor on the primary action. Stone chose not to appeal that decision. Stone did appeal the adverse ruling in the third party action, which alleged fraudulent concealment by persons other than the defendants before the Court in this action. The Supreme Court's discussion of Williams, Jr.'s application for a rehearing does not relieve the Court's concern that rights of the plaintiffs in the Alabama action were affected by a decision in an action in which they had no reason to involve themselves. Accordingly, the Court concludes that it would be unfair to grant preclusive effect to the decision of the Alabama Supreme Court in Stone's appeal.

C. *First Claim*

As mentioned above, plaintiff's third amended complaint advances two claims. In her first claim, plaintiff contends that she is entitled to an undivided one-third interest in the renewal copyrights to all musical works composed by Williams, Sr. and renewed pursuant to either the Copyright Act of 1909 or the Copyright Act of

1976. Plaintiff's first claim also demands "an accounting of all royalties, revenue, income, monies and other consideration . . . derived . . . from the exploitation of all musical compositions written in whole or in part by Williams, Sr." and payment of "any compensation owed to her pursuant to her undivided ownership interest in said . . . compositions." Complaint at 21. Plaintiff's first claim also seeks an order directing defendants to convey to plaintiff "legal title to her proportionate share of the renewal rights." *Id.*

Defendants assert that plaintiff's first claim for relief is barred by the three-year statute of limitations of the Copyright Act, 17 U.S.C. § 507(b). Plaintiff filed this action on September 12, 1985. Defendants insist, therefore, that in order for the suit to be within the statute of limitations period, plaintiff's cause of action must have accrued after September 12, 1982. Defendants claim that all of the possible accrual dates are before September 12, 1982, but settle on October 17, 1979 as the most likely date of accrual of plaintiff's cause of action. On that date, plaintiff met with a representative of the Alabama Department of Pensions and Security and acknowledged that her adoptive mother had told her that Williams, Sr. might be her biological father, that she knew her "identity" and that she did not want anyone to link her with Williams, Sr. *See* Defendants' Memorandum at 23.

Plaintiff claims that she brought her action within the statute of limitations. She insists that what she is asking the Court to do is to enforce "her Congressionally-granted renewal copyright interest by forcing her co-owners to account for her proportionate share of the income they receive from those copyrights." Plaintiff's

Memorandum at 12. In other words, plaintiff sees this action as "analogous to a copyright infringement claim." *Id.* at 14. Plaintiff accordingly argues that the statute of limitations begins to run anew every time she learns or should have learned of an act of infringement on her rights by the defendants. She therefore insists that each failure to account to her which took place after September 12, 1982 is an act for which she can recover in this action.

The first question to be addressed by the Court, therefore, is whether the plaintiff's claim is governed by the three-year statute of limitations of the Copyright Act of 1976, or whether plaintiff is correct in arguing that her claim is analogous to one for repeated infringements of her rights in the renewal term, each of which starts the statute of limitations period running anew.

After careful review of the third amended complaint, relevant case law and the submissions of the parties, the Court concludes that the three-year statute of limitations of the Copyright Act applies to plaintiff's first claim. The Court rejects plaintiff's argument that, because she seeks to establish her status through a declaratory judgment, the Copyright Act statute of limitations in [sic] inapplicable. Plaintiff is seeking to establish her status as a person entitled to share in the renewal terms of the copyrights of Williams, Sr.'s songs. The complaint itself states that plaintiff's first claim "arises under the copyright laws of the United States, and more particularly, the Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.*" Complaint ¶ 12. While plaintiff, clearly aware that the statute of limitations threatens her action, argues that her claim is analogous to a copyright infringement claim, what she is really asking the Court for is a declaration of her rights under

the Copyright Act. That being the case, the Court has no choice but to apply the clear statute of limitations provisions of the Copyright Act of 1976 to plaintiff's first claim.

Having determined that the three-year statute of limitations applies, the Court must next address when plaintiff's cause of action accrued. "Under federal principles, a claim accrues when the plaintiff knows or has reason to know of the injury that is the basis of the action." *See Cullen v. Margiotta*, 811 F.2d 698, 725 (2d Cir.) (quoting *Park v. Board of Education*, 654 F.2d 856, 859 (2d Cir.1981)), *cert. denied*, 483 U.S. 1021, 107 S.Ct. 3266, 97 L.Ed.2d 764 (1987). The Court agrees with the defendants that plaintiff's cause of action accrued on October 17, 1979. As mentioned above, that was the date on which plaintiff met with a representative of Alabama Department of Pensions and Security and acknowledged that her adoptive mother had told her that Williams, Sr. might be her father, that she knew her "identity" and that she did not want anyone to link her with Williams, Sr. Despite plaintiff's claims that Defendants withheld significant information from her, it is clear that by October 17, 1979 plaintiff had sufficient information to suggest that she could pursue a claim. *See* Defendants' Memorandum at 23. Plaintiff, at twenty-six, was well beyond her majority at the time that she acknowledged that she might be the daughter of Williams, Sr. Five years earlier, just before she turned twenty-one, her adoptive mother informed her of the rumors concerning her paternity so that plaintiff could collect an inheritance from Lillian Stone, Williams, Sr.'s mother. *See Stone v. Williams*, 873 F.2d 620, 622 (2d Cir.1989). In 1974, she read a book on Williams, Sr.

entitled "Sing a Sad Song," which mentioned the possibility that Williams, Sr. had fathered a child out of wedlock, and which discussed the possibility that the child might be entitled to a renewal interest in his songs. *See id. at 622-23. In 1980, still well within the statute of limitations period, plaintiff's adoptive father told her that he regretted withholding information from plaintiff and that he would assist her in pursuing the matter.* See id. *Nonetheless, plaintiff waited until five years later to commence this action.*

The Court having concluded that plaintiff's first claim accrued on October 17, 1979, and that accordingly plaintiff did not file this action within the statute of limitations period, this claim must be dismissed unless the Court accepts plaintiff's argument that the statute of limitations defense is not available to the defendants in this action. Plaintiff argues that defendants are precluded from using the defense because of their participation in the alleged fraud and their prior, superior knowledge of the existence of the plaintiff and her rights.

The Court concludes that the statute of limitations defense is available to the defendants in this situation. Even if deliberate action by some or all of the defendants prevented plaintiff from pursuing this action at one time, there was nothing to stop her after October of 1979 at the latest, and it was at that point that the statute of limitations began to run. *See Cullen,* 811 F.2d at 725.

Plaintiff cites two cases in support of her argument that the statute of limitations defense is not available to the defendants because of the fraud allegedly perpetrated on the Alabama state court and because of their prior, superior knowledge of the plaintiff and her rights. Both

are distinguishable from this case. The first, *Holmberg v. Armbrecht*, 327 U.S. 392, 66 S.Ct. 582, 90 L.Ed. 743 (1946), held that a equitable suit by a class of creditors of a joint stock land bank to enforce liability imposed on the shareholders by a federal statute was not barred by a state statute of limitations. The Supreme Court in that case did not rule that the defense of statute of limitations is never available to defendants who undertake to conceal plaintiff's claims by means of fraud. In fact, the Court announced that it had adopted the rule that "where a plaintiff has been injured by fraud and 'remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party.' " *Holmberg, supra*, 327 U.S. at 397, 66 S.Ct. at 585 (quoting *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 348, 22 L.Ed. 636 (1874)).

The second case cited by plaintiff is no more supportive of her argument than is *Holmberg v. Armbrecht*. In *Barrett v. United States*, 689 F.2d 324 (2d Cir.1982), *cert. denied*, 462 U.S. 1131, 103 S.Ct. 3111, 77 L.Ed.2d 1366 the Court of Appeals for the Second Circuit examined the application of the two-year statute of limitations of the Federal Torts Claims Act to a suit brought by the survivors of a mental patient who had been involuntarily used as a subject in chemical warfare experimentation. The patient died in 1953 as a result of the experiments and the Army actively concealed the fact for many years. The Second Circuit considered whether the Army's

actions interfered with the ability of the patients' survivors to sue so as to prevent the statute of limitations from running. The Court held that in such a situation the two-year FTCA statute of limitations did not begin to run "until the plaintiff has or with reasonable diligence should have discovered the critical facts of both his injury and its cause." *Barrett*, 689 F.2d at 327. Applied to the facts of this case, *Barrett*, like *Holmberg*, supports the Court's conclusion that the statute of limitations in this action began to run on October 17, 1979 and that it is available to the defendants as a defense.

For these reasons, the Court grants defendants' motion for summary judgment on the first count of plaintiff's complaint.

D. *Second Claim*

Plaintiff's second claim alleges that defendants Milene-Opryland Music, Rose, Acuff, Fred Rose Music, Inc., Milene Music, Inc. and Acuff-Rose-Opryland Music, Inc. conspired with Irene Smith and Robert B. Stewart. Irene Stewart is the sister of Williams, Sr. After the death of Lillian Williams Stone in 1955, Irene Smith took over as administratrix of Williams, Sr.'s estate. Smith continued to act as administratrix of the estate until 1969. Robert B. Stewart served as attorney for the Williams, Sr. estate from 1953 to 1975. He took over as administrator from Irene Smith in 1969.

Plaintiff's second claim sets out the details and goals of the alleged conspiracy as follows:

> 33. Smith and Stewart knew of plaintiff since her birth on January 6, 1953 and knew, since that

time, that she had claims and rights as the natural child of Williams Sr. While acting in their respective capacities as administrator and/or attorney for the estate, Smith and Stewart had a confidential relationship with plaintiff; they were charged with the highest degree of fiduciary duty to plaintiff; they were obligated to fully advise her or her appropriate representat'ves of all material facts and theories which could affect her claims, rights and interests arising from the fact that she is the natural daughter of Williams Sr.; they were required to to [sic] take whatever measures were necessary to protect her interest; and they were prohibited from placing the interest of another potential heir over her interest.

34. At all times alleged herein, defendants ARO Music, MOM Music, Rose Acuff, Fred Rose and Milene (hereinafter "Co-conspirator Defendants"), knew or had reason to know that plaintiff was the natural daughter of Williams Sr. and Williams Jr.'s half-sister, that Smith and Stewart were the administrators and/or the attorney for the estate, that Smith and Stewart had a confidential and fiduciary relationship with plaintiff and that Smith and Stewart were charged with the highest degree of fiduciary duty to plaintiff.

35. Co-conspirator Defendants, Smith and Stewart knew, or had reason to know, that the Alabama state Court, in making determinations regarding the estate, would depend in great measure on the integrity and thoroughness of Stewart and would depend on the facts and issues presented to the Court by Stewart.

36. Commencing at some time in at least 1960 or 1961, and continuing thereafter as more specifically alleged hereinbelow, and with full

> knowledge of the facts alleged hereinabove at paragraphs 31, 32, 33, and 35, Co-conspirator Defendants, Smith and Stewart knowingly and willfully conspired and agreed among themselves, and each of them, to unlawfully exploit and misuse Stewart and Smith's fiduciary relationship with plaintiff to (1) prevent plaintiff from perfecting her interest in the Williams, Sr. renewal copyrights and (2) to permit Co-conspirator Defendants to misappropriate plaintiff's interest in the Williams Sr. renewal copyrights for their sole and exclusive benefit.

In sum, plaintiff charges that the defendants named in this count conspired with Smith and Stewart, who are not named defendants, to prevent plaintiff from obtaining any benefit to which she might be entitled by preventing disclosure concerning plaintiff "to the Alabama courts, Drayton Hamilton, plaintiff's adoptive parents and plaintiff" of certain facts concerning the plaintiff's existence and possible rights. Plaintiff's Memorandum at 26.

Defendants argue that no such conspiracy could possibly have existed because plaintiff or her guardians knew "at all relevant times" that plaintiff was possibly Williams, Sr.'s daughter. Defendant's Memorandum at 81. Defendants also contend that plaintiff's second cause of action is barred as a matter of law, because there is no independent cause of action for conspiracy under Alabama law. Defendants argue that because there is no allegation that they made affirmative misrepresentations to the plaintiff, and because they had no affirmative duty to disclose facts of which they were aware concerning plaintiff's paternity, plaintiff has failed to state a claim

against them. Defendants point out finally that defendants Acuff-Rose-Opryland and Milene-Opryland Music were not even incorporated until 1985, twenty-five years after the commencement of the alleged conspiracy. Defendants argue that these two corporations did not assume any of the tort liabilities of their predecessors, and that accordingly plaintiff cannot state a claim as to them.

Plaintiff argues that it would be inappropriate to grant defendants' motion for summary judgment on Count II, insisting that there are material questions of fact to be resolved concerning defendants' liability. Plaintiff contends that defendants "conspired to deprive plaintiff of her renewal rights even though they owed a fiduciary duty to her and held her share of income in trust for her." Plaintiff's Memorandum at 27.

The parties agree that under Alabama law, where there is an allegation of participation in a civil conspiracy, the plaintiff's cause of action arises not from the conspiracy itself, but from the wrong alleged to be the object of the conspiracy. *See Ellis v. Zuck*, 409 F.Supp. 1151, 1159 (N.D.Ala.1976), *aff'd*, 546 F.2d 643 (5th Cir. 1977) (applying Alabama law); *see also* Plaintiff's Memorandum at 27; Defendants' Memorandum at 82. In *Purcell Co. Inc. v. Spriggs Enterprises*, 431 So.2d 515 (Ala.1983), the Alabama Supreme Court stated that " '[w]here civil liability for a conspiracy is sought to be enforced, the conspiracy itself furnishes no cause of action. This gist of the action is not the conspiracy alleged but the wrong committed.' " *Purcell*, 431 So.2d at 522 (*quoting C'Dell v. State ex rel. Patterson*, 270 Ala. 236, 240, 117 So.2d 164, 168 (1959)). The *Purcell* court went on to hold that because there had been a failure to establish a prima face case for the underlying

tort, "the conspiracy claim must also fail because there is no 'actionable wrong' to support the later theory." *Purcell*, 431 So.2d at 522 (*quoting Griese-Traylor Corp v. First National Bank*, 572 F.2d 1039 (5th Cir.1978)).

The defendants in the second count argue that plaintiff's conspiracy claim must fail as a matter of law because, as was the case in *Purcell*, the plaintiff has failed to state a claim for the underlying tort which plaintiff alleges supports the conspiracy charge. Accordingly, to decide whether plaintiff's conspiracy claim is to be dismissed for failure to state a claim, the Court must address defendants' argument that they could not, as a matter of law, have been guilty of the underlying wrongdoing of which they are accused.

As mentioned above, the wrong allegedly underlying the conspiracy is that defendants withheld information concerning plaintiff's existence and paternity in order to prevent her from asserting her claims of entitlement to benefits from the estate of Williams, Sr. or from the renewal of the copyrights in his works. Alabama recognizes a cause of action for fraudulent suppression of a material fact. *See* Ala. Code § 6-5-102 (1975) ("Suppression of a material fact which the party is under an obligation to communicate constitutes fraud. The obligation may arise from the confidential relations of the parties or from the particular circumstances of the case."). Courts applying Alabama law have found several factors necessary to state a claim for fraudulent suppression of a material fact. First, "mere silence is not actionable unless there is a duty to disclose material facts." *Bank of Red Bay v. King*, 482 So.2d 274, 284 (quoting *Holdbrooks v. Central Bank of Alabama, N.A.*, 435 So.2d 1250 (Ala.1983)). Second,

defendants can be held liable only for concealing facts of which they had knowledge. *See Lee v. United Fed. Savings & Loan Ass'n*, 466 So.2d 131, 135 (Ala.1985) (*quoting Harrell v. Dodson*, 398 So.2d 272, 276 (Ala.1981)). Third, the fact alleged to have been suppressed must have been material. *See Bank of Red Bay*, 482 So.2d at 285. Finally, a complaint for fraudulent suppression of material facts must allege damages. *See Berkel & Co. Contractors v. Providence Hospital*, 454 So.2d 496, 506 (Ala. 1984).

The Court first addresses whether defendants were under any duty to reveal whatever they knew. Plaintiff claims that defendants did have such a duty to disclose. According to the plaintiff,

> "[a] party has a duty to disclose 'if a confidential or fiduciary relationship' exists and if the one party has a particular knowledge or expertise not shared by the other party, thereby creating unequal bargaining positions. The defendants named in this claim conspired to deprive plaintiff of her renewal rights even though they owed a fiduciary duty to her and held her share of the income in trust for her."

Plaintiff's Memorandum at 27 (citations omitted).

Defendants argue that "plaintiff cannot point to any factual basis for the alleged co-conspirator's duty to disclose." Defendants' Memorandum at 84. The Court agrees. Plaintiff has presented no facts or arguments which support her vague assertion that the defendants in the second claim had a fiduciary duty to her. See *Bettis v. Bettis*, 475 So.2d 847, 851 (Ala.1985) (affirming grant of summary judgment in fraudulent concealment case where plaintiff "failed to prove defendant owed them any

legal duty under the circumstances."). In fact, the bulk of plaintiff's argument on this point, which appears at pages 28-29 of her memorandum, discusses not the basis of the plaintiff's arguments concerning the defendants' duties, but instead the defendants' silence, and argues that there exist genuine issues of fact concerning whether the defendants joined in a conspiracy. Absent a duty to disclose however, the law is clear that defendants' silence was not wrongful. *See Bank of Red Bay v. King*, 482 So.2d 274, 284 (quoting *Holdbrooks v. Central Bank of Alabama, N.A.*, 435 So.2d 1250 (Ala. 1983)).

Furthermore, even assuming that Stewart and Smith were in fact found to have perpetrated some fraud on the plaintiff or on the Alabama courts, plaintiff has failed to allege that defendants took any action to further the purposes of the alleged conspiracy. Instead, plaintiff's allegations are limited to assertions that the defendants were advised of Stewart and Smith's efforts to prevent plaintiff and the court from discovering her identity and rights. Absent a duty that would render their silence wrongful, the defendants could not have participated in a conspiracy to advance Stewart and Smith's goals simply by remaining silent.

For these reasons, defendants' motion for summary judgment is granted as to the second count of plaintiff's complaint.

E. *Aberbach Defendants' Motion*

In this motion, defendants Billie Jean Williams Berlin, Aberbach Enterprises and Chappell Music Company have asked the Court to determine the size of plaintiff's

share in the copyright renewal interests. The Court, however, has granted summary judgement for defendants on plaintiff's complaint. Accordingly, there is no need for the Court to resolve the question of the extent of plaintiff's interest in the copyright renewals.

Conclusion

For the reasons set forth above, defendants' motion for summary judgment on both counts of plaintiff's complaint is granted. In light of its disposition of the principal summary judgment motion, the Court declines to reach the Aberbach defendants' motion. This action is ordered removed from the active docket of this Court.

SO ORDERED.

APPENDIX C-1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

OPINION ON PETITION
FOR REHEARING

No. 732 – August Term 1988
(Argued February 1, 1989
Decided April 21, 1989)
(Petition for Rehearing Filed
September 7, 1989
Decided Dec. 5, 1989)

Docket No. 88-7860

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

v.

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., a Delaware Corporation, ABERBACH ENTERPRISES, LTD., a New York Corporation, ACUFF-ROSE OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE AND ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

Before:

VAN GRAAFEILAND, CARDAMONE and PIERCE,
Circuit Judges

Petition for rehearing under Fed. R. App. P. 40 made by Cathy Yvonne Stone of this panel's decision in *Stone v. Williams*, 873 F.2d 620 (2d Cir.), *cert. denied*, 58 U.S.L.W. 3301 (U.S. Nov. 7, 1989) (No. 89-295), that affirmed the grant of summary judgment dismissing appellant's complaint on the grounds of laches in the United States District Court for the Southern District of New York (Keenan, J.).

Petition for rehearing granted. Prior opinion vacated and case remanded to the district court.

MILTON A. RUDIN, Beverly Hills, California (Joseph L. Golden, Rudin & Appel, Beverly Hills, California; Kenneth E. Warner, Coblence Warner Hamilton & Smith, New York, New York, of counsel), *filed a brief for Plaintiff-Appellant.*

ALAN L. SHULMAN, New York, New York (Robert J. Warner, Richard H. Frank, Jr., W. Michael Milom, Christian A. Horsnell, Silverman, Shulman & Slotnick, New York, New York, of counsel), *filed a brief for Defendants-Appellees, Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc. and Milene Music, Inc.*

THOMAS R. LEVY, New York, New York, *filed a brief for Defendants-Appellees, Billie Jean Williams Berlin, Chappell Music Company and Aberbach Enterprises, Ltd.*

LAWRENCE I. FOX, New York, New York, (Stephen K. Rush, Dianna Baker Shew, Berger & Steingut, of counsel), *filed a brief for Defendants-Appellees, Acuff-Rose Opryland Music, Inc. and Milene-Opryland Music Inc.*

CARDAMONE, *Circuit Judge:*

Pursuant to an order entered August 24, 1989, granting her leave to file a petition for rehearing, Cathy Yvonne Stone petitions this panel under Fed. R. App. P. 40 for a rehearing. She had appealed from a judgment of the United States District Court for the Southern District of New York (Keenan, J.) granting summary judgment to defendant in an action plaintiff brought seeking her purported share of copyright renewal rights to songs composed by Hank Williams, Sr., her natural father. Defendants are the son and common-law wife of the late singer, and several individuals and corporations that are assignees of the copyrights to Hank Williams' songs. Judge Keenan ruled that plaintiff's claim was barred by laches. We affirm the district court in an opinion dated April 21, 1989, *Stone v. Williams*, 873 F.2d 620 (2d Cir.), *cert. denied*, 58 U.S.L.W. 3301 (U.S. Nov. 7, 1989) (No. 89-295).

The petition for rehearing of the appeal is granted. The April 21st opinion and judgment of this Court are vacated, and the matter is remanded to the district court for further proceedings.

I

At the time of plaintiff's appeal before us, she also had pending an appeal to the Supreme Court of Alabama where she sought to have her father's estate opened and to obtain her proportionate share of that estate. The defendants on that appeal included Irene Smith (Hank Williams' sister and the administratrix of his estate at the time plaintiff's claim to the estate was originally decided)

and Robert Stewart (Williams' attorney). In order to achieve that ultimate relief, Ms. Stone necessarily also petitioned the Alabama Supreme Court to set aside two orders entered in 1967 and 1968 by the Montgomery Circuit Court which, though acknowledging that Hank Williams was her natural father, declared that she was not an heir to his estate.

On July 5, 1989, the Supreme Court of Alabama reversed the trial court's award of summary judgment to defendants finding that they had intentionally, willfully and fraudulently concealed plaintiff's identity, existence, claim and rights as a natural child of Hank Williams, Sr. The court determined that defendants' fraud, along with other errors of law, presented sufficient grounds to set aside the 1967 and 1968 decrees that declared that plaintiff was not an heir to Williams' estate. This fraud, the court continued, excused plaintiff's delay in asserting her claim, and it held therefore that plaintiff had asserted her rights timely. It further found substantial evidence in the record that could indicate to a factfinder that defendants fraudulently conspired to keep certain facts relating to plaintiff's existence, identity and potential claim concealed from the courts of Alabama.

A.

A brief review of some of the factual background is necessary to understand the present posture of the matter now before us. When the famous country and western singer Hank Williams died (a few days before plaintiff was born) his mother, Lillian Stone, legally adopted

plaintiff. Hank Williams's sister, Irene Smith, had promised to care for plaintiff in the event that Lillian Stone was unable to. After Lillian Stone's death, Smith reneged on her promise, saying she wanted to avoid the "publicity and gossip" associated with the baby, and that it would be in the child's best interests to be put up anonymously for adoption. But a letter written earlier by Smith to attorney Stewart in 1954 suggests that Smith may have been motivated by more selfish reasons. Pertinent parts of that letter state:

> The idea you have about making Billy [Hank Williams' reputed widow] a legal wife isn't bad at all but I fear that once you accept her as one she will try every trick in the book. I keep thinking about the time when it will be necessary to renew copyrights on Hank's songs, as his legal wife she will be the one to do that unless of course that is one of the rights she gives up. Somehow I just can't picture her giving anything up.
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> * * *
>
> Thanks for sending the royalties check. It sure came in handy. . . . I want to thank you again for looking out for me. You know if mother adopts that child there will be a new will. Tee [Smith's husband] says that if she adopts it and then can't take care of it, he is not going to let me take it. Keep this under your hat, mabey [sic] it will never be necessary for me to have the child at all. I feel that poor child would have a lot better chance in this life if it were adopted by someone that would never know of its origin at all. . . . Oh, well I guess I sound like I just don't want mother to change her will but really that isn't it at all. . . .

Additional correspondence between attorney Stewart and legal counsel for Wesley Rose, one of the copyright assignees, reveals Stewart's early knowledge of plaintiff's claim to the copyright renewals. Relevant language in a letter from Rose's counsel to Stewart, dated February 28, 1962 stated:

> There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals. . . .

Stewart's letter in response, dated July 5, 1962, noted:

> Since the statutory right of the child comes to it through its father, and since the federal courts have held this right belongs to an illegitimate, we may be faced with a difficult problem, and certainly one we would not want to litigate. . . .

Stewart then listed several alternative ways that plaintiff's rights to the renewals might be cut off.

In 1967 Audrey Williams, Hank Williams' former wife (now deceased), petitioned for final settlement of the estate on behalf of her son Hank Williams, Jr. Attorney Stewart was called to testify by a guardian ad litem representing plaintiff. Although he produced a child support and custody agreement executed by Williams – which provided that plaintiff would be cared for by Williams – he did not divulge to the court information he had respecting other matters relating to plaintiff's claim to an interest in her father's estate.

In 1967 and 1968 the Montgomery County Circuit Court accordingly ruled that plaintiff was not an heir to

Williams' estate. Despite this ruling, when in 1969 Stewart became administrator of Williams' estate (succeeding defendant Smith), he began setting aside a share of the estate for plaintiff's benefit. At one time he wrote to Williams, Jr.'s attorney: "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." When Williams' estate was closed in August 1975, the portion set aside for plaintiff was distributed along with the other estate assets.

B.

Based upon this evidence the Supreme Court of Alabama concluded there was sufficient evidence of fraud perpetrated against Cathy Stone to make disposition of her case by summary judgment on that issue inappropriate. The court also examined whether plaintiff's claim should be barred by laches, and ruled that plaintiff's delay was excusable. The Alabama Supreme Court reasoned that she was permanently removed at age three from the city of her birth to another city for the express purpose of making it highly unlikely that she would discover her father's identity; all public records that might have revealed her paternity were ordered sealed; plaintiff had no idea of her relationship to Williams until 1974, and even then when the matter was first presented to her it was presented as mere speculation; the findings of the Alabama trial court in 1967 and 1968 (declaring that plaintiff was not an heir) were tainted by intentional fraud on the part of the administratrix and attorney of Williams' estate; and finally, plaintiff made prompt demand for her share of her father's estate as soon as she

received the sealed records containing firm evidence of her paternity.

II

Although not bound by the decision of the Alabama Supreme Court – its decision involved different parties and applicable law – we believe that its finding of fraud requires a reappraisal of our decision made before that court ruled. *Cf. Bott v. Four Star Corp.*, 807 F.2d 1567, 1576 (Fed. Cir. 1986) (defendant's egregious conduct may defeat its laches defense); *Johanna Farms, Inc. v. Citrus Bowl, Inc.*, 468 F. Supp. 866, 874 (E.D.N.Y. 1978) ("one who seeks Equity's assistance must stand before the court with clean hands"). More particularly, the finding of fraud warrants a reassessment of the prejudice to defendants that may result should we permit plaintiff's claim to proceed on the merits. *See, e.g., Czaplicki v. the Hoegh Silvercloud*, 351 U.S. 525, 534 (1956); *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1040 (2d Cir. 1980). We recognize that the principal defendants in the action before us are Hank Williams, Jr. and Billie Jean Williams Berlin, Hank Williams, Sr.'s common-law wife, not the administratrix and attorney of Williams' estate, as in the Alabama action. However, recited evidence in the Alabama court makes clear that the present defendants were aware of plaintiff's rights to the copyright renewals long before plaintiff. Irene Smith, who was instrumental in concealing from plaintiff evidence of who her father was, acted as Hank Williams, Jr.'s guardian during the 1967-68 proceedings. Similarly, Smith, as administratrix, and Stewart, as attorney, of Hank Williams' estate, conspired to conceal from Cathy Stone her potential rights, and took

pains to cut off those rights. These actions of his guardian benefited Hank Williams, Jr. Hank Williams, Jr.'s counsel was further advised by Stewart that a portion of the estate income was being withheld for appellant. Williams, Jr. never disavowed Stewart's actions, or mentioned any of these facts in prior court proceedings in Alabama in 1985 or in the district court proceeding we earlier reviewed and to which he and plaintiff were parties.

The prejudice to defendants we identified in our prior opinion, 873 F.2d at 625, would not have existed but for the failure of the present defendants to reveal the facts of which they had knowledge. Defendants could have sought a court declaration of their rights vis-a-vis plaintiff. Instead they chose to remain silent. They should not now be allowed to claim that they are prejudiced by plaintiff's present assertion of her rights when they were aware of them all along.

Consequently, in reassessing the equitable circumstances peculiar to this case, the equities fall on plaintiff's side. The present litigation is a contest, after all, between Hank Williams' heirs over copyright renewal rights. To allow defendants to bar plaintiff from claiming her rights when the availability of the laches defense was obtained by them in such an unworthy manner would not only grant defendants a windfall in this suit to which they are not entitled, but would also encourage a party to deliberately mislead a court. Courts of equity exist to relieve a party from the defense of laches under such circumstances. *See Holmberg v. Armbrecht*, 327 U.S. 392, 396-97 (1946).

Consequently, the evidence of fraud, which the Alabama Supreme Court found persuasive, makes summary judgment dismissing plaintiff's claim on the grounds of laches inappropriate. The figure representing justice is blindfolded so that the scales are held even, but justice is not blind to reality. Plaintiff therefore should have her day in court and an opportunity to have a jury determine the merits of her claim.

III

Plaintiff also requests a rehearing *en banc*. She claims an *en banc* hearing is merited because the dismissal of her claim on the ground of laches contradicts copyright law established by the Supreme Court in *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960) and *Menendez v. Holt*, 128 U.S. 514 (1888), and by us in *New Era Publications International v. Henry Holt & Co.*, 873 F.2d 576 (2d Cir. 1989). Since the dismissal of the case on laches grounds which this panel originally affirmed is now reversed, we need not decide this question.

IV

The petition for rehearing is granted. The previous opinion of this Court of April 21, 1989, *Stone v. Williams*, 873 F.2d 620 (2d Cir. 1989), is vacated, and replaced by the present opinion which now reverses the dismissal of plaintiff's complaint by the district court on the ground of laches. The matter is remanded to the district court for further proceedings on the merits.

APPENDIX D-1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 732 – August Term, 1988

(Argued February 1, 1989 Decided APR 21, 1989)

Docket No. 88-7860

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

v.

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., a Delaware Corporation, ABERBACH ENTERPRISES, LTD., a New York Corporation, ACUFF-ROSE OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

Before:

VAN GRAAFEILAND, CARDAMONE and PIERCE
Circuit Judges

Cathy Yvonne Stone appeals the judgment of September 7, 1988 of the United States District Court for the

Southern District of New York (Keenan, J.) granting defendants' motion for summary judgment on the ground of laches, and denying her cross motion for summary judgment, and dismissing her complaint.

Affirmed.

MILTON A. RUDIN, Beverly Hills, California (Joseph L. Golden, Susan H. Green, Rudin & Appel, Beverly Hills, California; Marjorie M. Smith, Coblence Warner Hamilton & Smith, New York, New York, of counsel), *for Plaintiff-Appellant.*

ALAN L. SHULMAN, New York, New York (Robert J. Warner, Jr., Richard H. Frank, Jr., W. Michael Milom, Christian A. Horsnell, Silverman, Shulman & Slotnick, New York, New York, *Attorneys for Defendants-Appellees Hank Williams, Jr., Wesley H. Rose, Roy Acuff, Fred Rose Music, Inc., and Milene Music, Inc.*; Lawrence I. Fox, Stephen K. Rush, Katherine M. Allen, Berger & Steingut, New York, New York, *Attorneys for Defendants-Appellees Acuff-Rose Opryland Music, Inc. and Milene-Opryland Music, Inc.*; Thomas R. Levy, New York, New York, *Attorneys for Defendants-Appellees Billie Jean Williams Berlin, Chappell Music Company and Aberbach Enterprises, Ltd.*, all of counsel), *for Defendants-Appellees.*

CARDAMONE, *Circuit Judge:*

Cathy Yvonne Stone brought this action in the United States District Court for the Southern District of New York (Keenan, J.) for her purported share of copyright renewal rights to songs composed by Hank Williams, Sr.,

her natural father. The defendants in this action are Hank Williams, Jr., the son of Hank Williams and stepson of Billie Jean Williams Berlin, who was married to Hank Williams at the time of his death, and a number of music companies or individuals that have obtained an interest in the copyright proceeds of the Williams' songs including: Aberbach Enterprises; Chappell Music Company; Acuff-Rose Opryland, Inc.; Milene-Opryland Music, Inc.; Fred Rose Music, Inc.; Milene Music, Inc.; Roy Acuff; and Wesley H. Rose. The sole issue presented is whether the district court abused its discretion when it granted defendants' motion for summary judgment and dismissed appellant's complaint on the grounds of laches. Even granting to Ms. Stone's situation the fullest stretch of sympathy, her own delay and procrastination in the end bars her suit. The district court's judgment, therefore, is affirmed.

I FACTUAL BACKGROUND

The dispute arises over copyright renewal proceeds for 60 published and copyrighted songs written or performed by country and western singer Hank Williams (Williams, Sr.) who died intestate on January 1, 1953 at the age of 29. During his lifetime the well-known singer and composer wrote such popular hits as "Your Cheatin' Heart" and "Hey Good Lookin' ". We set forth the facts briefly in chronological order.

Appellant Stone was born on January 6, 1953 in Alabama, five days after Williams, Sr. died. While Ms. Stone's biological mother, Bobbie Jett, was pregnant with her in October of 1952, she and Williams, Sr. executed an

agreement under which he acknowledged that he might be the father of appellant, but specifically did not admit paternity. The agreement further provided that Williams, Sr. pay Bobbie Jett for Ms. Stone's support, and placed the infant's custody until age 2 in Lillian Williams Stone, mother of Williams, Sr., who was present at the drafting and the execution of the agreement together with the two principals. Pursuant to its terms, Lillian Stone adopted plaintiff, and Bobbie Jett left for California. Until her death in 1955 Mrs. Stone cared for appellant. At that point, Williams, Sr.'s sister, Irene Smith, reneged on her promise to care for Cathy Stone if anything happened to Lillian Stone. As a result, appellant became a ward of the State of Alabama, and at age three in 1956 a foster child of the Deupree family. The Deuprees adopted her in 1959.

Williams, Sr. had a son, Hank Williams, Jr. The assignment of Hank Williams, Jr.'s copyright interests in his father's music generated litigation in 1967 and 1968 in the Circuit Court of Montgomery County, Alabama. That court appointed a guardian *ad litem*, attorney Drayton Hamilton, to ascertain any unknown potential heirs to the Williams estate and to represent their interests. After investigating, Hamilton concluded that the only such person was appellant Stone. Unbeknownst to Ms. Stone, her adoptive family, the Deuprees, had asked Hamilton to leave her out of the 1967 proceedings, because they thought it unlikely that she would win and were worried that their then 14-year-old daughter would be subjected to embarrassing publicity because of her status as the illegitimate child of a famous country western singer. Nonetheless, Hamilton zealously litigated Ms. Stone's interests, but to no avail. The Alabama court determined

that Hank Williams, Jr. was the sole heir of his father, and further held that appellant, as a natural child who had been adopted by another family, had no rights in any proceeds from the Williams, Sr.'s songs or their renewal rights. In reaching this conclusion, it relied on *De Sylva v. Ballentine*, 351 U.S. 570 (1956) (holding that courts must look to state law to determine child's legal status for inheritance before evaluating the child's renewal rights under the Copyright Act).

After the disruptive first few years of her life, Ms. Stone appears to have enjoyed an ordinary childhood, and developed a closely bonded relationship with the Deuprees, with no knowledge of her natural parents. Then, in late 1973, shortly before appellant's 21st birthday, Mrs. Deupree told her of the rumors regarding the identity of her natural father, but added that everything had been decided against her. This disclosure was necessary because, upon turning age 21, Ms. Stone was entitled to a small inheritance from Williams, Sr.'s mother, Lillian Stone. The Deuprees were concerned that appellant might encounter reporters while claiming the inheritance and wanted to arm her with knowledge. After picking up the inheritance check (about $3,800) at the Mobile County Courthouse, Ms. Stone went to a library and read a biography on Williams, Sr., entitled *Sing a Sad Song*, written by Roger Williams. This book mentioned the possibility that Williams, Sr. had fathered an illegitimate daughter, and the author speculated on the child's entitlement to a renewal interest in his songs. Ms. Stone surmised that she might be that daughter.

In the following years, appellant asked the Deuprees about her background and talked to some attorney acquaintances, but did little else to ascertain her connection to Williams. She recalls that the Deuprees told her that there was nothing more to do. In 1979, she met with personnel from the state agency responsible for adoptions – the Alabama Department of Pensions and Securities – but states that she no longer remembers the substance of the conversation. The record, including appellant's deposition, suggests that her feelings about Williams' parentage were ambivalent.

Her attitude crystallized in 1980 when she received a telephone call from her adoptive father, George Deupree. Evidently alluding to his decision not to pursue Ms. Stone's rights in the 1967-68 lawsuits, Deupree told her that he had undergone a change of heart after seeing Hank Williams, Jr. on a television show. Deupree has since died, but appellant related the conversation in her deposition: "I want to ask you if you would like to find out if Hank Williams is your father. He said think about it. And he said I will help you in any way that I can. And he said I think I was wrong in withholding information from you and not discussing it. And I will do everything I can to help you."

Following this call, Ms. Stone stepped up her efforts to learn about her relationship to Williams, Sr. she looked up newspaper articles about him, and sought out his relatives and those of her natural mother, Bobbie Jett, who had also since died. She met with attorney Hamilton, her former guardian *ad litem*, and discussed with him the 1952 custody and support agreement between Bobbie Jett and Williams, Sr., and obtained the records from the 1967

and 1968 Circuit Court proceedings. But Ms. Stone did not examine those documents until after she met attorney Keith Adkinson (who later became her husband) in 1984.

Appellant filed the original declaratory judgment complaint in this action on September 12, 1985 which, as amended to include all of the above-named defendants, contains two claims. The first claim against all the defendants arises under the Copyright Acts of 1909 and 1976 and seeks a number of declarations, including that Ms. Stone is the natural daughter of Williams, Sr., and as such is entitled to a proportionate share of the renewal rights from his songs. The second claim alleges that certain of the defendants committed a conspiracy to defraud her.

In addition to this federal action, Hank Williams, Jr. and Ms. Stone sued each other in Alabama state court in 1985, each seeking a declaratory judgment on appellant's status vis-a-vis Hank Williams, Sr. That court held that even though Ms. Stone was the natural child of Williams, Sr., she was not his heir under Alabama law. Thus, it gave preclusive effect to the prior 1967 and 1968 Alabama Circuit Court state ruling.

Appellant and defendants moved for summary judgment in the instant action on a number of grounds including statute of limitations and res judicata. The district court, in granting defendants' motion for summary judgment and dismissing her complaint, relied on the doctrine of laches and did not reach the other issues.

II DISCUSSION

Historically laches developed as an equitable defense based on the latin maxim *vigilantibus non dormientibus*

aequitas subvenit (equity aids the vigilant, not those who sleep on their rights). *See Independent Bankers Ass'n of America v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980) (per curiam). In contrast to a statute of limitations that provides a time bar within which suit must be instituted, laches asks whether the plaintiff in asserting her rights was guilty of unreasonable delay that prejudiced the defendants. *See, e.g., Gardner v. Panama Railroad Co.*, 342 U.S. 29, 31 (1951); *Lottie Joplin Thomas Trust v. Crown Publishers, Inc.*, 592 F.2d 651, 655 (2d Cir. 1978). The answers to these questions are to be drawn from the equitable circumstances peculiar to each case.

A ruling on the applicability of laches is overturned only when it can be said to constitute an abuse of discretion. *See Czaplicki v. The S.S. Hoegh Silvercloud*, 351 U.S. 525, 534 (1956); *Gardner v. Panama Railroad Co.*, 342 U.S. 29, 30 (1951); *Dickey v. Alcoa S.S. Co.*, 641 F.2d 81, 82 (2d Cir. 1981) (per curiam). Because this is an appeal from a motion for summary judgment that dismissed appellant's complaint, we construe the record in the light most favorable to appellant. We therefore presume the correctness of the 1985 holding of the State Court of Alabama that Cathy Stone is the natural daughter of Hank Williams, Sr. *See United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (per curiam) (inferences must be drawn in favor of nonmoving party).

We must analyze the reasonableness of delay and the resulting prejudice, *see, e.g., Czaplicki*, 351 U.S. at 533; *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037, 1040 (2d Cir. 1980), to see whether there was a material issue of fact that should have been submitted to a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A. Delay

Although laches promotes many of the same goals as a statute of limitations, the doctrine is more flexible and requires an assessment of the facts of each case – it is the reasonableness of the delay rather than the number of years that elapse which is the focus of inquiry. *See Gardner*, 342 U.S. at 31-32 (the matter should not be determined by reference to mechanical application of statute of limitations; equities of parties must be considered); *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946); *Wagg v. Herbert*, 215 U.S. 546, 553 (1910). In holding that Ms. Stone unreasonably delayed in bringing this action to have her rights declared, the district court focused on the years 1974-85, beginning with Mrs. Deupree's conversation with appellant regarding the inheritance, and ending with the filing of the complaint that initiated the instant case.

In our view, the delay for the period from 1974 to 1980 may well have been entirely excusable under the circumstances. First, her relationship with the Deuprees is by all indications the paradigm of a successful adoption. Thus, it is not surprising that loyalty and gratitude to Mr. and Mrs. Deupree, whom she considered her real parents, gave her pause at doing anything that might hurt their feelings. For this reason, George Deupree's telephone call to Ms. Stone is significant. Only after he called in 1980 could appellant be sure that investigating her natural parentage would not damage the only family bonds she knew. Second, Ms. Stone's embarrassment at asserting her relationship to Williams, Sr. is also understandable, because his notoriety would have made publicity almost impossible for her to avoid. This is

substantiated by the extensive press coverage of the 1967 and 1968 court proceedings.

Third, only in recent years have courts and the general public come to recognize that children born of unmarried parents should not be penalized by being accorded a status for which they are not to blame. In the 1967 and 1968 proceedings, attorney Hamilton argued on Ms. Stone's behalf that discriminating against illegitimate children violated the Federal Constitution. Unfortunately for appellant, Hamilton was before his time; the case that would remove much of the stigma associated with illegitimacy was then pending before the Supreme Court, but not decided until after appellant's rights had been adjudicated. *See Levy v. Louisiana*, 391 U.S. 68, 72 (1968) (holding unconstitutional state statute that discriminated against illegitimates to discourage births out of wedlock).

But even though Ms. Stone might arguably be excused for the reasons just stated from filing suit until 1980, there is simply no plausible explanation for her delay in filing the instant complaint until September 1985, after five more years had passed. Appellant's filial loyalty is admirable, and one can sympathize with her feelings of embarrassment and trepidation attendant upon widespread personal publicity. But these reasons for delay cannot last forever for purposes of laches. A point arrives when a plaintiff must either assert her rights or lose them. Here Ms. Stone's procrastination and delay, which silently allowed time to slip away, remain as the only reason for her failure [sic] bring suit earlier.

Where plaintiff has not slept on her rights, but has been prevented from asserting them based, for example,

on justified ignorance of the facts constituting a cause of action, personal disability, or because of ongoing settlement negotiations, the delay is reasonable and the equitable defense of laches will not bar an action. *See* Note, *Laches in Federal Substantive Law: Relation to Statutes of Limitation*, 56 B. U. L. Rev. 940, 972 (1976). There is no such reasonable excuse, or any issue of fact presented in the instant case that would permit a jury to excuse appellant's delay for the five years beginning in 1980 and ending in September 1985.

B. Prejudice

Laches is not imposed as a bar to suit simply because a plaintiff's delay is found unexcused; it must also be determined whether the defendants have been prejudiced as a result of that delay. *See Saratoga Vichy Spring Co.*, 625 F.2d at 1040. Although an evaluation of prejudice is another subject of focus in laches analysis, it is integrally related to the inquiry regarding delay. Where there is no excuse for delay, as here, defendants need show little prejudice; a weak excuse for delay may, on the other hand, suffice to defeat a laches defense if no prejudice has been shown. *See Larios v. Victory Carriers, Inc.*, 316 F.2d 63, 67 (2d Cir. 1963). Defendants may be prejudiced in several different ways. *See Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 844 (D.C. Cir. 1982). One form of prejudice is the decreased ability of the defendants to vindicate themselves that results from the death of witnesses or on account of fading memories or stale evidence. Another type of prejudice operates on the principle that it would be inequitable in light of some change in defendant's position to permit plaintiff's claim

to be enforced *See Holmberg*, 327 U.S. at 396. Defendants here were prejudiced in both ways.

As the district court noted, some of the key people having knowledge of the events preceding Ms. Stone's birth have died since 1974 – George Deupree, Bobbie Jett and Billie Jean Williams Berlin [sic]. All of their deaths are not equally prejudicial. For example, Bobbie Jett died in 1974, so absence of her testimony cannot be found to prejudice defendants because she would not have been alive to testify even if appellant had filed suit immediately. Nevertheless, the circumstances giving rise to this appeal have already spanned over two decades and the additional five years of Ms. Stone's unexcused delay doubtless would hamper the defense further – appellant's deposition reveals that even her memory has faded significantly in the interim. *See Dickey v. Alcoa S.S. Co.*, 641 F.2d 81, 83 (2d Cir. 1981). We conclude that the defendants were prejudiced to some degree by evidence that was lost by death or weakened during the delay. Because the defendants were injured in other ways by the delay, we need not hold that a finding of this kind of prejudice is alone sufficient to support the laches defense.

Prejudice may also be found if, during the period of delay, the circumstances or relationships between the parties have changed so that it would be unfair to let the suit go forward. The defendants have entered into numerous transactions involving Williams, Sr.'s songs. Ms. Stone responds that these transactions need not be unravelled – she could simply share in the profits. But that argument ignores the fact that the transactions were premised on the apparent certainty of the ownership of the songs' renewal rights – attributable to appellant's delay. This

procrastination prejudiced defendants by lulling them into a false sense of security that the renewal rights were as they appeared and that she would not contest the 1967 and 1968 court ruling. *See Independent Bankers Ass'n of America v. Heimann*, 627 F.2d at 488 (D.C.Cir. 1980); *Carl Zeiss Stiftung v. VEB Carl Zeiss Jena*, 433 F.2d 686, 704 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

We cannot be sure that defendants' [sic] would have struck the bargains they did had they anticipated the diminution in their profits that Ms. Stone seeks. This result is logically not altered by whether the defendants made actual expenditures or whether they simply incurred the opportunity costs implicated in foregoing other ventures. As Judge Learned Hand wrote as a district court judge in a copyright case in which the plaintiff delayed for 16 years before filing suit, it would be unfair for a plaintiff "to stand inactive while the proposed infringer spends large sums of money in its exploitation, and to intervene only when his speculation has proved a success. Delay under such circumstances allows the owner to speculate without risk with the other's money; he cannot possibly lose, and he may win." *Haas v. Leo Feist, Inc.*, 234 F. 105, 108 (S.D.N.Y. 1916); *see also Independent Bankers*, 627 F.2d at 488. We therefore agree with the district court that the change in relationships and circumstances that occurred while Ms. Stone delayed would prejudice the defendants if the case were allowed to proceed at this late date.

Finally, we note that the underlying value of the laches doctrine, as with statutes of limitations, is that of repose. Even assuming that appellant's claims are meritorious, the availability of the laches defense represents a

conclusion that the societal interest in a correct decision can be outweighed by the disruption its tardy filing would cause. Thus, courts, parties and witnesses "ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights." *See Burnett v. New York Central R.R. Co.*, 380 U.S. 424, 428 (1965).

III CONCLUSION

We hold therefore that Ms. Stone's delay in filing suit until September 1985 was unexcused and has prejudiced defendants. Accordingly, the order of the district court is affirmed.

APPENDIX E-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CATHY YVONNE STONE, Plaintiff, -against- HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a division of CHAPPELL & CO., INC., ABERBACH ENTERPRISES, LTD., ACUFF-ROSE OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC., Defendants.	85 Civ. 7133 (JFK) OPINION and ORDER

APPEARANCES:

For Plaintiff:
James A. Goodman, Esq.
Rudin, Richman & Appel
Beverly Hills, CA
Of Counsel: Marjorie Smith, Esq.
Coblence & Warner
New York, NY

F. Keith Adkinson, Esq.
Washington, D.C.

For Defendants Hank Williams, Jr.,
Wesley H. Rose, Roy Acuff,
Fred Rose Music, Inc. and
Milene Music, Inc.:
Alan L. Shulman, Esq.
Silverman, Shulman & Slotnick, P.C.
New York, NY

For Defendants Acuff-Rose Opryland Music, Inc.
and Milene-Opryland Music, Inc.:
Lawrence I. Fox, Esq.
Berger & Steingut
New York, NY

For Defendants Billie Jean Williams Berlin, Chappell
Music Company and Aberbach Enterprises, Ltd.:
Thomas R. Levy, Esq.
New York, NY

JOHN F. KEENAN, United States District Judge

JOHN F. KEENAN, United States District Judge:

Background

Plaintiff, born on January 6, 1953, brings this action concerning her allegation that she is the illegitimate daughter of the late country and western singer Hank Williams, Sr. ("Hank") and is entitled to a share of the royalties derived from Hank's compositions ("the Works").

Plaintiff has sued ten defendants: Hank Williams, Jr., the legitimate son of Hank and Audrey Mae Williams; Billie Jean Williams Berlin, who was married to Hank

when he died on January 1, 1953; Aberbach Enterprises, Ltd., the owner of the copyright renewal rights in the Works that previously had been held by Berlin and were transferred to Aberbach pursuant to a May 28, 1969 agreement; Chappell Music Company, an entity that acts as an administrative agent for Aberbach in connection with the Berlin renewal interest; Acuff-Rose Opryland Music, Inc. ("ARO"), the successor in interest of both the original rights and the renewal rights in the Works held by Williams, Jr.; Milene-Opryland Music, Inc. ("MOM"), an additional successor in interest in the original rights and the renewal rights in the Works held by Williams, Jr.; Fred Rose Music, Inc. ("FRMI"), a corporation that, in 1963, obtained the renewal rights held by Williams, Jr. and was liquidated on May 29, 1985; Milene Music, Inc., a corporation that, in 1963, also obtained the renewal rights held by Williams, Jr. and was liquidated on May 29, 1985; and Roy Acuff and Wesley H. Rose, Trustees in Liquidation for FRMI and Milene Music.

The Third Amended Complaint alleges two causes of action. First, the complaint avers that plaintiff is Hank's illegitimate daughter, and as such is a "child" entitled to one-third of the rights, and interests in and derived from, the Works pursuant to the United States Copyright Act of 1976. Second, plaintiff contends that defendants ARO, MOM, Rose, Acuff, FRMI and Milene and certain non-parties engaged in a conspiracy that lasted over fifteen years. The goal of this alleged scheme was to prevent plaintiff from perfecting her copyright interest in the Works so that the defendants would have the sole financial benefit of the copyrights. The defendants purportedly achieved this goal by withholding from plaintiff and the

Alabama state courts information about her identity and by arranging for the appointment of Drayton Hamilton as guardian ad litem for plaintiff during legal proceedings held in 1967-1968. In addition, the scheme allegedly included a 1963 agreement made by Williams, Jr., through his guardian, with FRMI and Milene providing for Williams, Jr. to transfer his rights in the Works.

Currently pending before the Court are three motions. The defendants have jointly moved for summary judgment asserting, *inter alia*, that the claims are barred by the copyright statute of limitations, laches, equitable estoppel, res judicata, collateral estoppel, and the terms of the 1976 Copyright Act. Plaintiff has cross-moved for partial summary judgment on her claim that she is Hank's natural daughter and that she is entitled to an undivided one-third interest in all renewal rights in the Works. Defendant Berlin, Chappell Music and Aberbach Enterprises have moved for partial summary judgment on the ground that if plaintiff were to prevail on her first cause of action, Berlin is entitled to a one-half interest in the Works and Hank's children are entitled jointly to a one-half interest.

For the reasons set forth below, the Court grants the defendants' motion for summary judgment and the complaint is dismissed in its entirety. The Court, therefore, does not reach the questions raised in either plaintiff's partial summary judgment motion or in the partial summary judgment motion made by defendants Berlin, Chappell Music and Aberbach Enterprises.

Facts

For the purposes of defendants' summary judgment motion, the Court assumes that Hank is plaintiff's natural father. Her natural mother is Bobbie Jett. Plaintiff was conceived in approximately April, 1952. Although Hank allegedly wanted to raise the child, his desires did not extend to marrying the child's mother, Bobbie Jett. This intention was made unmistakably clear on October 18, 1952, when Hank married defendant Berlin. However, Hank entered a contract with Jett three days prior to marrying Berlin. The agreement addressed custody issues and called for him to bear various financial responsibilities in connection with the birth of Jett's child. The contract also stated that paternity was in doubt and not admitted by the agreement. On January 1, 1953, Hank Williams, Sr. died at 29 years of age. Less than one week later, on January 6, 1953, Bobbie Jett gave birth to plaintiff.

After Jett left the hospital, the baby was left in the care of Lillian Stone and Marie Harvell, Hank's mother and cousin respectively. On December 23, 1954, a final decree of adoption was entered by the Montgomery County, Alabama, Department of Public Welfare giving Mrs. Stone the child. Irene Smith, Hank's sister, promised to care for the child in the event something happened to Mrs. Stone. Sadly, Mrs. Stone died on February 26, 1955 and Smith broke her pledge. Plaintiff was made a ward of the State of Alabama on April 29, 1955 and remained a ward of the state until February 21, 1956. On that date, an interlocutory order of adoption was entered giving custody to the Deupree family. On April 23, 1959, a final decree of adoption was entered.

While plaintiff was being raised by the Deuprees and living her early life, events concerning Hank's estate and other collateral issues continued to unfold. Plaintiff was awarded $2,000 as her homestead interest in Mrs. Stone's residence after Mrs. Stone died. This money was placed in an interest-bearing account with the Circuit Court of Montgomery County, Alabama, to be held for plaintiff until she turned twenty-one years old on January 6, 1974. As will be described below, plaintiff only became aware of this bequest in approximately December, 1973. In 1963, the guardian of Wiiliams [sic], Jr. petitioned the Circuit Court of Montgomery County, Alabama, for permission to sell Williams, Jr.'s rights in the renewal term copyrights in the Works to FRMI. The court granted the request and an agreement was entered on March 20, 1963.

This agreement resulted in litigation taking place during 1967 and 1968 in the Circuit Court. The action attempted to determine all rights in the Works and involved Williams, Jr.'s petition to vacate the 1963 agreement. Thus, an inquiry was made into the existence of any unknown heirs to the estate. Drayton N. Hamilton, a Montgomery attorney who had previously been appointed as plaintiff's guardian ad litem in connection with Lillian Stone's estate, was named guardian ad litem by the Circuit Court to represent any minors who might have an interest in Hank's estate. After conducting an investigation, Hamilton told the court that plaintiff was the only potential additional heir. Hamilton contacted the Deuprees through the Alabama Department of Pensions and Security ("Alabama P & S") and advised them of the 1967-1968 proceedings. Mr. and Mrs. Deupree came to

Montgomery and apparently had a meeting with Hamilton. Hamilton was told not to pursue any claim on behalf of plaintiff. Despite this request, Hamilton continued to press vigorously the rights of plaintiff as Hank's natural daughter. During his activities, Hamilton obtained a copy of the 1952 contract between Hank and Jett which was introduced as evidence in the Circuit Court. After conducting evidentiary hearings which were widely reported in the Alabama press, the Circuit Court ruled that plaintiff was not an heir entitled to any inheritance from Hank's estate. Hamilton then unsuccessfully sought leave to appeal the court's rulings, despite the wishes of the Deuprees.

The matter remained closed until approximately the end of 1973. By this time, plaintiff was a college student at the University of Alabama. The Deuprees went to Tuscaloosa to visit plaintiff at college during either the end of December, 1973 or the early part of January 1974. Since plaintiff was on the verge of turning twenty-one years old, the issue of Lillian Stone's estate needed to be addressed. At one point during the visit of her adoptive parents, plaintiff went to the Deuprees' hotel room. Although the accounts of plaintiff and Mrs. Deupree differ slightly, the following is undisputed. Mrs. Deupree told plaintiff that Hank Williams, Sr. either was, or could be, her biological father, and that after her twenty-first birthday plaintiff had to go to the Montgomery courthouse to pick up an inheritance from the estate of Lillian Stone. Soon thereafter, plaintiff went to Montgomery and was accompanied by an uncle, Stanley Fountain, who was a United States Marshal. Her conversation with Mrs. Deupree and her trip to Montgomery prompted plaintiff

to visit a library in Tuscaloosa to research Hank's life. Plaintiff read a book by Roger Williams entitled *Sing a Sad Song* which chronicled Hank's life. The book contained a passage concerning a child born to a brunette from Tennessee. The child, according to the book, was cared for by Lillian Stone until the child was adopted. After her discussion with Mrs. Deupree and the receipt of a $3,800 inheritance from the Stone estate, plaintiff thought that this child might have been herself when she read the book in early 1974. Plaintiff, who claims Mrs. Deupree told her that there was no proof showing Hank to be her natural father and that everything had already been decided against plaintiff, then chose not to pursue the matter further.

Another significant event occurred during 1976. Plaintiff told Nicholas Braswell, a Montgomery attorney who was married to one of plaintiff's college sorority sisters, that she was adopted and might be the biological daughter of Hank Williams, Sr. Braswell was familiar with Judge Richard Emmett [sic] who had presided over the 1967-1968 Circuit Court proceedings. Braswell told plaintiff that Judge Emmett [sic] had a tremendous interest in Hank and had memorabilia from Hank's career all over his office. Braswell asked plaintiff if she objected to his calling up Judge Emmett [sic] and passing along her claim; plaintiff told Braswell to call Judge Emmett [sic]. After Braswell spoke with the judge, he again spoke with plaintiff, telling her that Judge Emmett [sic] would like to meet her. Plaintiff, however, never tried to contact the judge while he was in Montgomery. At some point, Judge

Emmett [sic] moved from Montgomery, Alabama, to California. Although plaintiff learned about this relocation in the newspapers, she never attempted to find out where in California Judge Emmett [sic] moved to, and never attempted to contact him.

In December, 1980, plaintiff received a telephone call from Mr. Deupree. During the conversation, Deupree told plaintiff that he had made certain decisions in the 1960's which he had come to regret. Presumably, these decisions concerned the 1967-1968 proceedings in the Circuit Court. Deupree stated that if plaintiff wanted to discover whether Hank was her biological father, he would help in any way possible. Deupree evidently had this change of heart after watching Williams, Jr. give an interview on a television program. Deupree told plaintiff that he would send her some newspaper articles and the names of certain individuals with whom he had been in contact during the 1960's.

At this point, plaintiff attempted to discover what her file with the Alabama P & S contained. Although plaintiff could not obtain access to her file, she does not recall the reasons given by the Alabama P & S. She then told the Alabama P & S that she wanted to contact her natural mother. As a result, the department wrote a letter to Willard Jett, Bobbie Jett's uncle. During 1981, plaintiff once again read books and newspaper articles on Hank. Yet, it was in 1981 that she read an article that referred to Hank's cousin, Marie Harvell. She had previously spoken with Charles Carr, Hank's chauffeur, a name she uncovered by reading a book. Carr told plaintiff about the existence of Harvell. During 1981, plaintiff visited Harvell. Upon seeing a birth mark on plaintiff's arm, Harvell

began to cry, evidently believing that plaintiff was Hank's daughter. Plaintiff made subsequent visits to the Harvell home and discussed Hank, Bobbie and their relationship. Harvell also gave plaintiff Willard Jett's name. Plaintiff telephoned Willard, who resided in Nashville, and was told that Bobbie had died. Plaintiff had additional telephone conversations with Willard and had meetings with his wife. Later in 1981, plaintiff travelled to Nashville and met other members of the Jett family. In addition, plaintiff went to see the Cooks, a family that cared for plaintiff after the death of Mrs. Stone and prior to her adoption by the Deuprees. In October, 1981, plaintiff travelled to California to gather more information about Bobbie Jett; plaintiff made no attempt to locate Judge Emmett [sic] during this trip.

Plaintiff's investigation also brought her to Drayton Hamilton and another lawyer, Joseph Matranga. Plaintiff went with Hamilton to the Montgomery courthouse to examine records pertaining to the 1967-1968 proceeding. Mr. Deupree retained Matranga to assist with the investigation and Matranga recommended to plaintiff that she solicit Hamilton's assistance in locating pertinent documents. Hamilton stated that he would send material to Matranga. Despite being in contact with Hamilton and seeing a large box of documents in 1981, it was not until 1984 that plaintiff asked Matranga for the documents he had received from Hamilton. In September, 1984, plaintiff met F. Keith Adkinson, an attorney who she subsequently married. On September 12, 1985, plaintiff brought this lawsuit.

Over the past twenty years, other events touching on this case have also transpired. Since January 1, 1974,

Bobbie Jett, Audrey Mae Williams and George Deupree have all died. In addition, Robert Stewart, who drafted the 1952 contract between Hank and Bobbie, and represented Hank and members of his family and the estate, died in the intervening years. Various financial transactions have been completed during the past twenty years. FRMI and Milene paid royalties from the Works to Hank's estate, Williams, Jr. and Audrey Mae Williams. Pursuant to the 1963 agreement, FRMI, Milene, ARO and MOM have all paid royalties to Williams, Jr. based on the Works' renewal term rights. Consequently, Williams, Jr. has reported these royalties on his personal income taxes over the years. After the payment of royalties for the period ending June 30, 1985, ARO and MOM have withheld from Williams, Jr. payments of royalties arising out of the renewal term rights pursuant to an assignment. ARO and MOM, as well as FRMI and Milene, reported on their tax returns those royalty sums not paid to Williams, Jr., Audrey Mae Williams or the estate. In addition, these entities executed licenses and contracts for the exploitation of the Works. When FRMI and Milene were liquidated, the Trustees sold the copyrights that the companies held, warranted their good title and pledged to indemnify the purchaser for any breach of the warranties. Berlin, Chappell and Aberbach have also received royalties based on Berlin's interest in the renewal term rights. Each has reported these royalties on their respective income taxes.

DISCUSSION

The parties in this hotly contested action have thoroughly briefed several areas including the 1976

Copyright Act, the statute of limitations, res judicata and collateral estoppel. However, this entire controversy turns on a basic and time honored principle: "Equity aids the vigilant, not those who slumber on their rights." *Standard Oil Co. of New Mexico v. Standard Oil Co. of California*, 56 F.2d 973, 975 (10th Cir. 1932).

The doctrine of laches serves as a complete bar to a plaintiff's claims if the defendants demonstrate an unreasonable and inexcusable delay by plaintiff in bringing the lawsuit and that the delay resulted in undue prejudice suffered by the defendants. *Dalsis v. Hills*, 424 F. Supp. 784, 788 (W.D.N.Y. 1976). Laches requires a balancing of the equities between the parties. *Potash Co. v. International Minerals & Chemical Corp.*, 213 F.2d 153, 156 (10th Cir. 1954). Therefore, the longer a plaintiff unjustifiably delays in asserting a claim, the lesser the showing of prejudice that will be required of the defendant. *Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 843 (D.C. Cir. 1982). The laches calender clearly does not turn its pages when an individual is justifiably ignorant of the facts giving rise to a claim. *Potash Co.*, 213 F.2d at 155. However, a plaintiff cannot look away from facts that could support a claim, and then later – in this case, many years later – begin to act on those facts and obtain judicial relief. Thus, the clock begins to tick when plaintiff has either actual or constructive notice of facts supporting a cause of action. *Knox v. Milwaukee County Board of Elections Commissioners*, 581 F. Supp. 399, 402 (E.D. Wis. 1984); *Anaconda Co. v. Metric Tool & Die Co.*, 485 F. Supp. 410, 427 (E.D. Pa. 1980). As the Supreme Court noted nearly a century ago,

> [t]he defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands, not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts.

Foster v. Mansfield, Coldwater and Lake Michigan Railroad Co., 146 U.S. 88, 99 (1892).

An analysis of plaintiff's conduct demonstrates that she ignored facts as early as 1974 that alerted her to the strong possibility that Hank Williams, Sr. was her biological father. Indeed, a cynic might suggest that plaintiff slumbered peacefully, and knowingly, on her rights until she was awakened by the attractive sound of a ringing cash register.

As plaintiff reached twenty-one years of age in January, 1974, she was told, at a minimum, that she could be the biological daughter of one of the most successful country and western singers of all time, Hank Williams, Sr. Soon thereafter, she went to the courthouse in Montgomery to pick up an inheritance of over $3,000 from the estate of a woman who plaintiff could have readily discovered to be Hank's mother. Plaintiff testified that this amount was a significant figure to her when she went to the courthouse at age twenty-one. Despite the fact that she was an adult at the time, plaintiff was accompanied to court by her uncle, a federal marshal, because of the Deuprees' concern that news reporters would be present.

At this point, a reasonable person would clearly be on notice that Hank was suspected to be plaintiff's biological father. In fact, plaintiff herself entertained this thought. After receiving her inheritance, she went to a library and read a biography of Hank, *Sing a Sad Song*, written by Roger Williams. Plaintiff believed that she might have been the subject of a passage describing Hank's illegitimate daughter born in 1953. However, she did nothing to pursue the issue other than to ask the Deuprees certain questions, the subject matter of which she does not remember. Plaintiff, an adult, accepted the statements of the Deuprees that there was no proof of Hank's parentage and that "it had all been decided." Moreover, in 1976 plaintiff learned that Judge Richard Emmett [sic] was a long time Hank Williams buff. Plaintiff permitted the judge to be told of her claim that she might be Hank's illegitimate daughter, but opted not to see him after learning of the judge's desire for a meeting. Indeed, once the judge moved to California, she did not attempt to locate him.

The fact that plaintiff made a calculated decision not to pursue her biological link to Hank during the 1970's is made irrefutable by her deposition testimony. At her deposition on November 5, 1986, plaintiff testified as follows:

> Q. Do you recall ever having the feeling that you did not want anyone to know that you may be the daughter of Hank Williams or believed yourself to be the daughter of Hank Williams?
>
> . . . .
>
> A. Yes, sir.

Shulman Aff., Ex. 2 at 332-33.

Q. Is there any reason to think that it's not true? That those were your feelings between the period of January or December '73 or January '74 through 10/17/79?

A. No, sir.

Id. at 333.

Q. Let's try to put this in prospective [sic]. We've already discussed one time in your life that you didn't want to be linked with Hank Williams; is that right?

A. Yes, sir.

Q. But you don't have a specific knowledge as to the beginning and ending period of that feeling; is that correct?

A. That's correct.

Q. Based upon this testimony and your prior testimony, you had that feeling, did you not, between, at least December '73 and 10/17/79?

. . . .

Q. Based upon this information and your prior testimony?

A. Yes, sir.

Q. It's your statement that you did not want to be identified in any way with Hank Williams between December '71 [sic] and 10/17/79 in any way, correct?

. . . .

A. That's correct.

Id. at 342-43.

As a result of her desire not to be connected with Hank, plaintiff did not attempt to contact any individual who had personal knowledge of plaintiff's parentage. Plaintiff never attempted to contact any relative of either Hank or Bobbie Jett, any of Hank's personal or professional acquaintances, Robert Stewart, the attorney for Hank's estate, author Roger Williams, or any member of the press with knowledge of the 1967-1968 proceedings. For whatever reason, plaintiff did not seriously look into her link with Hank until 1981. It is beyond dispute that plaintiff engaged in an unreasonable and inexcusable delay in bringing her claim.

The Court now turns to whether plaintiff's delay resulted in undue prejudice to the defendants. The types of prejudice that support the defense of laches include " 'the loss of evidence that would support the defendant's position,' " or the defendant having changed his position in a manner that would not have occurred if the plaintiff had acted promptly. *Goodman v. McDonnell Douglas Corp.*, 606 F.2d 800, 808 n.17 (8th Cir. 1979) (quoting *Tobacco Workers International Union Local 317 v. Lorillard Corp.*, 448 F.2d 949, 958 (4th Cir. 1971)), *cert. denied*, 446 U.S. 913 (1980). Prejudice may also be found where a defendant has acted in reliance on the "false sense of security" that he was lulled into by the plaintiff's delay. *See Independent Bankers Assoc. v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980) (per curiam); *Helene Curtis Industries, Inc. v. Church & Dwight Co., Inc.*, 560 F.2d 1325, 1334 (7th Cir. 1977), *cert. denied*, 434 U.S. 1070 (1978); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss Jena*, 433 F.2d 686, 704 (2d Cir. 1970), *cert. denied*, 403 U.S. 905 (1971).

The prejudice suffered by the defendants in this case is profound. Obviously, their first line of defense to plaintiff's claim is that she is not Hank's biological daughter. However, the events leading up to her birth took place in 1952. Thus, even if plaintiff proceeded promptly during the middle to late 1970's, the defendants would confront the obstacles of fading memories and lost proof. This problem is grossly exacerbated by plaintiff's decision to forgo pursuing a connection with Hank's legacy during the 1970's, only to turn around in the 1980's and stake a claim to his estate. As noted earlier, in the years since plaintiff first knew of her possible relationship with Hank, individuals with personal knowledge of relevant events have died. In the forefront of these individuals is Bobbie Jett, who died in California during 1974. Her testimony, either in person or preserved in a deposition, would be most important evidence in the case. Moreover, those individuals who would be available to testify have recollections of the pertinent events that have faded and become less reliable over time. This fact is very clear when one reads the depositions submitted by plaintiff in support of her motion for partial summary judgment.

The defendants have also suffered undue prejudice in that they have entered financial and business transactions during the period of plaintiff's inertia based on the belief that Hank Williams, Jr. was Hank's only child. FRMI, Milene and their trustees made warranties on the copyrights when they sold their interest. ARO and MOM purchased the assets of FRMI and Milene, and the relevant copyrights, before learning of plaintiff's allegations. Moreover, all of the defendants who realized income

derived from the exploitation of the copyrights paid income taxes based on those proceeds. These defendants now face a situation where, if plaintiff prevailed, they would lose the money paid in taxes that was based on a share of the copyright royalties that was above the accurate amount, or face the daunting and costly task of seeking to recover these monies from the federal treasury.

It is important to note that the event which spurred plaintiff to action in December, 1981 was a conversation with Mr. Deupree that lacked any startling new revelation. He merely told her that she could be Hank's daughter, that he regretted certain actions he had taken during the 1960's and that he would assist plaintiff in discovering whether Hank was her biological father. After the conversation, Mr. Deupree sent plaintiff some articles and certain names, but did not provide plaintiff with materials that would not have been available to her had she diligently pursued the issue in the mid-1970's.

Laches is not a doctrine concerned merely with the passage of time. Rather, laches also addresses the changes in conditions and relationships which are intertwined with the lawsuit over that passage of time. *See Galliher v. Cadwell*, 145 U.S. 368, 373 (1892); *Lingenfelter v. Keystone Consolidated Industries, Inc.*, 691 F.2d 339, 340 (7th Cir. 1982) (per curiam). Many transactions have taken place, human memories have faded and several key people have died since plaintiff first knew that Hank Williams, Sr. might be her father. Plaintiff was an adult and made a conscious choice during the 1970's; it would be unfair to the defendants to permit plaintiff to reap the benefits of her recent change of heart.

CONCLUSION

The defendant's motion for summary judgment is granted and the complaint is hereby dismissed. The case is to be removed from the active docket of this Court.

SO ORDERED.

Dated: New York, New York
September 6, 1988

/s/ John F. Keenan
JOHN F. KEENAN
U.S.D.J.

APPENDIX F-1

Supreme Court of the United States

No.

A-453

Hank Williams, Jr., et al.,

Petitioners

v.

Cathy Yvonne Stone

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including January 31st, 1992~~.~~3.

/s/ Clarence Thomas
Associate Justice of the
Supreme Court of the
United States

Dated this 4th
day of December, 1992.

Supreme Court, U.S.
FILED
JAN 29 1993
OFFICE OF THE CLERK

92-1288

No. _____

In The

Supreme Court of the United States

October Term, 1992

HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

APPENDIX TO PETITION VOLUME II

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88-7860

In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE, an individual,

Plaintiff-Appellant,

-against-

HANK WILLIAMS, JR., BILLE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a division of CHAPPELL & CO., INC., a Delaware corporation, ABERBACH ENTERPRISES, LTD., a New York corporation, ACUFF-ROSE OPRYLAND MUSIC, INC., a Tennessee corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee corporation, and MILENE MUSIC, INC., a Tennessee corporation,

Defendants-Appellees.

From a Final Order of the United States District Court for the Southern District of New York.

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APPENDIX G-2

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

V

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., A Delaware Corporation, ABERBACH ENTERPRISES, LTD., A New York Corporation, ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT
COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK

PETITION FOR REHEARING

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DOCKET NO. 88-7860

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

V

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., A Delaware Corporation, ABERBACH ENTERPRISES, LTD., A New York Corporation, ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

PETITION FOR REHEARING

Pursuant to Rule 40 of the Federal Rules of Appellate Procedure, appellant Cathy Yvonne Stone presents this Petition for Rehearing in the above-entitled appeal, and

in support thereof respectfully presents the following grounds.

In an Opinion dated April 21, 1989, this Court affirmed the decision of the United States District Court for the Southern District of New York granting summary judgment in favor of appellees on the ground of laches. Judgment thereon was entered on April 21, 1989. This Petition for Rehearing is timely under Rule 40(a) of the Federal Rules of Appellate Procedure.

I

A REHEARING SHOULD BE GRANTED BECAUSE THE COURT OVERLOOKED AND/OR MISAPPREHENDED CONTROLLING POINTS OF LAW

In affirming the District Court's decision, this Court overlooked and/or misapprehended the following points of law:

1. Renewal copyrights and the interests therein are created by Congress in section 304 of the 1976 Copyright Act, 17 U.S.C. §304. *Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 570 F.2d 554, 556 (6th Cir. 1978). An owner of an interest in a renewal copyright is entitled to an accounting of his/her share of the income earned from each licensing of the renewal copyright. *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.*, 223 F.2d 252 (2d Cir. 1955). A claim for breach of that duty to account does not arise until the duty is violated – *i.e.*, when the renewal copyright is licensed and the income therefrom is not properly accounted for.

In affirming the District Court's award of summary judgment as to the entire action, this Court overlooked or

misapprehended the nature of appellant's interest in the renewal copyrights. This Court's decision divests appellant of the Congressionally-created right to her share of the income to be earned from the licenses to use the renewal copyrights (a) which appellees have granted since the action was filed and (b) which will be granted during the 37-41 years remaining in the renewal copyright terms after suit was filed, simply because she waited 1-3/4 years longer than the applicable limitations period before filing suit. Laches might bar appellant from receiving her share of the income earned from licenses granted before September 12, 1982 or even September 12, 1985. But it was a misuse of the defense and a miscarriage of justice to preclude her from receiving her share of the licensing income for the next 37-41 years. *Halcon Int'l. v. Monsanto Australia, Ltd.*, 446 F.2d 156, 159 (7th Cir.), *cert. denied*, 409 U.S. 949 (1971).

2. This Court also overlooked the continuing nature of appellees' wrongful appropriation of appellant's interest in the renewal copyrights and failed to follow the well-established principle that laches precludes only the recovery of pre-filing damages but does not bar an action from proceeding as to post-filing events. *Leinoff v. Louis Milona & Sons, Inc.*, 726 F.2d 734, 741 (9th Cir. 1984) [laches does not bar action, only recovery of pre-filing damages]; *Hampton v. Paramount Pictures Corp.*, 279 F.2d 100, 105 (9th Cir.), *cert. denied*, 364 U.S. 882 (1960) [delay immaterial where only prospective relief sought]; *In Re Yarn Processing Patent Validity Litig. (No. II)*, 602 F. Supp. 159, 170 (W.D.N.C. 1984) [laches bars recovery only for acts occurring prior to filing of complaint]; *Hayden v. Chalfant Press, Inc.*, 177 F. Supp. 303, 307 (S.D. Cal. 1959),

aff'd, 281 F.2d 543 (9th Cir. 1960). *See generally*, 3 *Nimmer on Copyright*, §12.06 (1988). This rule is not limited to infringement actions. *See, e.g., Environmental Defense Fund v. Marsh*, 651 F.2d 983, 1005, n. 32 (5th Cir., Unit A, 1981).

This Court's reliance on *Haas v. Leo Feist, Inc.*, 234 F. 105 (S.D.N.Y. 1916) to support its contrary result is based on a misapprehension of that case. First, the delay was not 16 years, it was approximately 13 months. 234 F. at 106. Second, all the money that was to be earned from the infringing song was earned by the defendants before the suit was brought. *Id.* Third, Judge Hand refused to give Piantadosi, the non-innocent infringer, the benefit of the rule. *Id.* at 108. Fourth, an injunction against future infringements was granted. *Id.* at 109.[1] Fifth, the result as to the innocent infringers is questionable given the three-year statute of limitations in 17 U.S.C. §507(b).

The *Haas* opinion in fact supports appellant's position on this point. All of the money to be earned from licensing the renewal copyrights has not yet been earned; over 35 years remain. Appellees are not innocent wrongdoers; they have always known of appellant's claim. Judge Hand did not bar relief as to future events because of the delay, just the recovery of pre-filing profits.

3. This Court also overlooked the point of law that the time allowed by the statute of limitations is not counted against a plaintiff in a laches analysis, for laches is no defense to an action filed within the statute of limitations. *United States v. RePass*, 688 F.2d 154, 156 (2d Cir. 1982).

---

[1] Upon rehearing, the complaint was dismissed on an unrelated ground.

The applicable limitations period began on September 12, 1983, 17 U.S.C. §507(b) and *Mount v. Book-of-the Month Club*, 555 F.2d 1108, 1111 (2d Cir 1977). Appellant was relieved of her fillial obligations by a December 1980 telephone call from her adopted father [Jt.App. 242a, Opinion at 2957-58]. Thus, the delay to be evaluated is at most 1-3/4 years (December 1980 to September 1982), not five years as this Court decided [Opinion at 2958].

II

A REHEARING SHOULD BE GRANTED BECAUSE THE COURT OVERLOOKED AND/OR MISAPPREHENDED NUMEROUS MATERIAL FACTS

In its Opinion this Court also overlooked and/or misapprehended the following material facts:

1. The Court held that appellees were prejudiced by appellant's failure to file suit between 1980 and 1985 because "some of the key people having knowledge of the events preceding [her] birth have died since 1974 – George Deupree, Bobbi Jett and Billie Jean Williams Berlin" [Opinion at 2960]. Yet those individuals either had no first hand knowledge of the events preceding appellant's birth [Deupree], died before 1980 [Jett] or were alive when this suit was filed [Williams Berlin].[2] Moreover,

---

[2] Billie Jean Williams Berlin is still alive. If the Court meant Audrey Mae Williams rather than Billy Jean Williams Berlin, the misapprehension nevertheless remains. Audrey Mae Williams was the first wife of Williams, Sr. *Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 403 F.Supp. 420 (M.D. Tenn. 1975), *affirmed*, 570 F.2d 554 (6th Cir. 1978). They were divorced in 1952, and she died in 1975 [Jt. App. 192a, ¶80].

Mrs. Deupree, Drayton Hamilton, Judge Emmett [sic], the Alabama P & S officials with whom appellant came in contact and numerous other percipient witnesses were alive when this suit was filed (and were deposed). No material witnesses became unavailable between 1980 and 1982 (or 1985), and thus appellees did not suffer this form of prejudice because of that delay.

2. The issue as to which the deceased witnesses supposedly would have testified – whether appellant is the natural child of Hank Williams, Sr. – was irrelevant to the District Court's decision because that court assumed she was for purposes of the motion. Furthermore, the Alabama state court held in 1987 that Williams, Sr. was her natural father. Thus, no testimony material to appellant's ancestry was lost after December, 1980.

3. This Court held appellees would be prejudiced because they "entered into numerous transactions involving Williams, Sr.'s songs . . . [which] were premised on the apparent certainty of the ownership of the songs' renewal rights – attributable to appellant's delay [Opinion at 2960-61]. In reaching that conclusion this Court overlooked the following facts:

> a) Any mechanical license granted by the appellees after September 12, 1985 was granted with full knowledge of this lawsuit. Mechanical licenses are granted for a particular use, not for a term of years. The amount of the license fee in no way depends on the number of owners of the renewal copyright being licensed. It is either negotiated on a case by case basis with the licensee or set by statute. 17 U.S.C. §115. *See Recording Indus. Ass'n of America v. Copyright Royalty Tribunal*, 662 F.2d 1, 4 (D.C. Cir. 1981).

There will be hundreds, if not thousands, of such licenses granted between September 12, 1985 and the end of the various renewal copyright terms. *See Mills Music, Inc. v. Snyder*, 469 U.S. 153, 158 (1985) and Rose Affidavit [Jt. App. 252a]. Each of these licenses will have been or will be granted with full knowledge of appellant's claim. Allowing appellant to proceed to trial to determine her right to share in the income earned from those licenses will not deprive appellees of the benefits of any position taken vis-á-vis these licenses in reliance on appellant's supposed inaction.

b) The assignment of Williams, Jr.'s interest in the renewal copyrights to the Acuff/Rose Interests in 1963 [Jt. App. 181a-82a] and the assignment of Williams Berlin's interest in the renewal copyrights to the Aberbach Interests in 1969 [Jt. App. 182a] were made long before 1980. Those agreements were negotiated *with full knowledge* of appellant's potential claim. Appellees sought to eliminate that potential claim by way of the 1967-1968 Alabama proceedings. Appellant's delay between 1980 and 1985 made no difference in those decisions.

c) The supposed prejudice to be suffered by Williams, Jr. and Williams Berlin by having to share the income received before September 1983 (or 1985) could be totally ameliorated by (1) denying appellant the right to share in that income, *Halcon Int'l., Inc. v. Monsanto Australia, Ltd., supra*, or (2) requiring appellant to reimburse them for the tax consequences (which is all they complain about). Prejudice which can be ameliorated so easily should not support a laches defense.

d) There is no competent evidence in the record to support the claim of prejudice by reason of the May 1985 acquisition by Acuff-Rose-

Opryland Music, Inc. ("ARO") and Milene Opryland Music, Inc. ("MOM"), of the assets of Acuff-Rose Publications, Inc., Milene Music, Inc. Fred Rose Music, Inc. and Acuff-Rose Songs, supposedly without knowledge of appellant's potential claim. The conclusory Wentworth Affidavit [Jt. App. 256a-260a] does not supply any such evidence. Rule 56(e) of the Federal Rules of Civil Procedure.

In fact, that affidavit and the Purchase Agreement [Jt. App. 624a-689a] evidences a ready means by which ARO and MOM can protect themselves from any such prejudice – by withholding payments due under the promissory notes pending a reevaluation of the value of the assets pursuant to ¶4 of the Purchase Agreement. [Jt. App. 260a, ¶17 and Jt. App. 638a-39a, ¶4]. MOM and ARO agreed upon the purchase price according to what they believe *they*, as the publisher, could earn from licensing all the copyrights they purchased (not just the copyrights at issue herein). It does not matter, logically or otherwise, to MOM or ARO how many individuals own interests in the renewal copyrights. However many there are, all will participate in the 50% writer's share[3] of the license fees ARO and MOM collect. ARO and MOM will collect their 50% publisher's share regardless.

The sellers of the copyrights, Acuff and Rose, knew of appellant's claim, participated in the 1967-1968 Alabama proceedings, and supposedly relied on the resulting court orders in making the representations and warranties they made to ARO and MOM. They would have

---

[3] That percentage is the "standard practice in the music publishing industry." *Harry Fox Agency, Inc. v. Mills Music, Inc.*, 720 F.2d 733, 735 (2d Cir. 1983), *reversed sub nom. Mills Music Inc. v. Snyder, supra.*

> made the same *res judicata* arguments in 1980 as they made in the court below in support of their motion. There is no support for this Court's conclusion that they were lulled into a false sense of security by appellant's failure to challenge the 1967-1968 orders earlier than she did.

"Lack of diligence, standing alone, is insufficient to support a claim of laches; the party asserting the claim also must establish that it was prejudiced by the delay." *Marjorica, S.A. v. R. H. Macy & Co., Inc.*, 762 F.2d 7, 8 (2d Cir. 1985). This Court's determination that appellees will be prejudiced by reason of the delay from 1980 to 1985 is not supported by the evidence in the record. This Court misapprehended the facts upon which its determination of prejudice is based.

4. This Court misapprehended the nature of the "discussion" concerning the 1952 Williams, Sr.-Jett custody and support agreement that appellant had with Drayton Hamilton after 1980 [Opinion at 2955]. The only thing about the agreement "discussed" during that meeting was that the document was part of sealed court records. Appellant did not learn the contents of that agreement, and thus that Williams, Sr. had not abandoned her as she previously believed, until 1984 when Keith Adkinson obtained it and read it to her [Jt.App. 216a(¶70) and April 27, 1987 Stone Affidavit, ¶¶8 and 9]. She filed suit within a year after that.

III

CONCLUSION

For the foregoing reasons, appellant respectfully petitions for a rehearing of this appeal.

Dated: May 4, 1989

Respectfully submitted,

RUDIN AND APPEL
A Professional Corporation
9601 Wilshire Blvd., Suite 800
Beverly Hills, California 90210

OF COUNSEL:
MILTON A. RUDIN
JOSEPH L. GOLDEN

COBLENCE WARNER
HAMILTON & SMITH
1370 Avenue of the Americas
New York, New York 10019

OF COUNSEL:
KENNETH E. WARNER

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9601 Wilshire Boulevard, Penthouse, Beverly Hills, California 90210.

On May 4, 1989, I served the foregoing document described as follows: PETITION FOR REHEARING on the interested parties in this action by placing two true copies thereof enclosed in three sealed envelopes with postage thereon fully prepaid in the United States Mail at Beverly Hills, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare that I am employed in the office of an attorney who is a member of the bar of this Court at whose direction the service was made.

/s/ Christine H. Anderson
Christine H. Anderson

Subscribed to and sworn before me
on this 4th day of May, 1989.

/s/ Helen Montrose
Notary Public

OFFICIAL SEAL
HELEN MONTROSE
Notary Public-California
LOS ANGELES COUNTY
My Comm. Exp. Apr. 23, 1991

SERVICE LIST

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Lawrence I. Fox, Esq.
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New York, New York 10022

Thomas R. Levy, Esq.
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New York, New York 10017

APPENDIX G-3

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United STates [sic] Court of Appeals, in and for the Second circuit, held at the United States Courthouse, in the City of New York, on the 23rd day of May one thousand nine hundred and eighty-eight.

Present: HON. ELLSWORTH A. VAN GRAAFEILAND,
HON. RICHARD J. CARDAMONE,
HON. LAWRENCE W. PIERCE,

88-7860

CATHY YVONNE STONE, and [sic] Individual,

Plaintiff-Appellant,

(FILED MAY 23 1989)

-V-

HANK WILLIAMS, JR. ET. AL.,

Defendants-Appellee,

A petition for a rehearing having been filed herein by counsel for the plaintiff-appellant, Cathy Yvonne Stone,

Upon consideration thereof, it is

ORDERED that said petition be and it hereby is DENIED.

/s/ Elaine B. Goldsmith
ELAINE B. GOLDSMITH
Clerk

APPENDIX G-4

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Second Circuit Rule 27(a) governing use of this form is reprinted on reverse of Page 2 *Note requirement that supporting affidavits be attached*

CATHY YVONNE STONE

v

HANK WILLIAMS, JR., et al.

Use short title

88-7860 *Docket Number*

NOTICE OF MOTION

state type of motion

for RECALL OF MANDATE AND ORDER GRANTING LEAVE TO FILE PETITION FOR REHEARING AND REHEARING IN BANC

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

MILTON A. RUDIN, ESQ *
RUDIN and APPEL, a Professional Corporation
9601 Wilshire Boulevard, Suite 800
Beverly Hills, California 90210
(213) 274-4844

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

ALAN L. SHULMAN, ESQ. **
Silverman, Shulman & Slotnick, P.C.
136 East 57th Street

New York, New York 1002
(212) 758-2020

Has consent of opposing counsel:

A. been sought? [ ] Yes [X] No

B. been obtained? [ ] Yes [X] No

Has service been effected? [X] Yes [ ] No

Is oral argument desired? [ ] Yes [X] No

(Substantive motions only)

Requested return date:

(See Second circuit Rule 27(b))

Has argument date of appeal been set:

A. by scheduling order? [X] Yes [ ] No

B. by firm date of argument notice? [X] Yes [ ] No

C. If Yes, enter date: February 1, 1989. Decision: April 21, 1989

Judge or agency whose order is being appealed:

Honorable John F. Keenan, S.D.N.Y.

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? [ ] Yes [ ] No

(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for this motion? [ ] Yes [ ] No

If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? [ ] Yes [ ] No

* Coblence, Warner, Hamilton & Smith
1370 Avenue of the Americas
New York, N.Y. 10019 (212) 957-9700

Brief statement of the relief requested:

Appellant requests that the mandate of this Court issued on June 5, 1989, be recalled in order that Appellant be permitted to file a Petition for Rehearing and Rehearing In Banc, and that said Petition be ordered filed within fourteen (14) days after this Motion is granted.

Complete Page 2 of This Form

By: *(Signature of attorney)*

/s/ Milton A. Rudin
Signed name must be printed beneath

Milton A. Rudin
Appearing for: *(Name of party)*

Cathy Yvonne Stone

Date

July 31, 1989

Appellant or Petitioner:

[XX] Plaintiff [ ] Defendant

Appellee or Respondent:

[ ] Plaintiff [ ] Defendant

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is

granted denied

** Lawrence I. Fox, Esq.
Berger, Steingut, Weiner, Fox & Stern
600 Madison Avenue
New York, New York 10022
(212) 980-1400

Thomas R. Levy, Esq.
300 East 42nd Street, 9th Floor
New York, New York 10017
(212) 682-6110

_____

_____

Previous requests for similar relief and disposition:

None. However, Appellant did file a Petition for Rehearing previously, which was denied on May 23, 1989.

Statement of the issue(s) presented by this motion:

Whether this Court should recall its mandate and grant Appellant leave to file a second petition for rehearing and rehearing in banc in light of *New Era Publications International ApS v. Henry Holt and Co.*, 873 F.2d 576 (2d Cir. 1989) and *Catherine Yvonne Stone v. Gulf American Fire and Casualty Co.*, Case No. 87-269 (Alabama Supreme Court, July 5, 1989).

Brief statement of the facts (*with page references to the moving papers*):

1. On April 21, 1989, the judgment of this Court affirming the District Court's decision was filed. On May 5, 1989, Appellant filed her Petition for Rehearing,

which was denied on May 23, 1989. On June 5, 1989, this Court's mandate issued. (Memorandum at 1-2.)

2. On July 5, 1989, the Alabama Supreme Court decided *Catherine Yvonne Stone v. Gulf American Fire and Casualty Co.*, Case No. 87-269. That Court held that the 1967-1968 judgments that Appellant was not an heir of Williams, Sr. had been obtained through fraud committed by Irene Smith, Robert Stewart and others, including certain of the Appellees. That court further held that Appellant is the natural daughter and an heir of Williams, Sr., and is entitled to a share of the proceeds of his estate and of the renewal copyrights commencing with August 1985 (Memorandum at 2-3).

3. On April 19, 1989, another panel of this Court decided *New Era Publications International ApS v. Henry Holt and Co.*, 873 F.2d 596 (2d Cir. 1989). That panel recognized and applied the general rule, not applied by this Court, that laches does not destroy the right or preclude all relief whatever in cases involving copyrights (Memorandum at 3-4).

Summary of the argument (*with page references to the moving papers*);

1. Because the mandate has issued, it must be recalled before Appellant can file a second petition for rehearing and/or a petition for rehearing in banc. Whether to recall the mandate is vested in this Court's discretion (Memorandum at 5).

2. A direct conflict now exists in this Circuit regarding the correct application of laches in copyright cases such as this, between this Court's decision and *New Era Publications International ApS v. Henry Holt and Co.*, 873 F.2d 576 (2d Cir. 1989) (Memorandum at 6-8).

3. A change in circumstances and conflict exists between this Court's decision and the Alabama Supreme Court's decision in *Catherine Yvonne Stone v. Gulf American Fire and Casualty Co.*, regarding Appellant's

rights to the renewal copyrights (Memorandum at 5-6).

4. The change in circumstances and these conflicts justify a recall of the mandate so that this Court's decision can be reconsidered in light of those recent decisions.

APPENDIX G-5

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE v HANK WILLIAMS, JR., et al. *Use short title*	88-7860 **NOTICE OF MOTION** (filed Aug. 1, 1989) *state type of motion* for RECALL OF MANDATE AND ORDER GRANTING LEAVE TO FILE PETITION FOR REHEARING AND REMAINING IN BANC

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

MILTON A. RUDIN, ESQ.*
RUDIN and APPEL, a Professional Corporation
9601 Wilshire Boulevard, Suite 800
Beverly Hills, California 90210
(213) 274-4844

Has consent of opposing counsel:

A. been sought? [ ] Yes [X] No

B. been obtained? [ ] Yes [X] No

Has service been effected? [X] Yes [ ] No

Is oral argument desired? [ ] Yes [X] No

(Substantive motions only)

Requested return date:

(See Second Circuit Rule 27(b))

Has argument date of appeal been set:

A. by scheduling order? [X] Yes [ ] No

B. by firm date of argument notice? [X] Yes [ ] No

C. If Yes, enter date: February 1, 1989, Decision; Judge or agency whose order is being appealed: April 21, 1989

Honorable John F. Keenan, S.D.N.Y.

OPPOSING COUNSEL: *(Name, address and tel. no of law firm and of attorney in charge of case)*

ALAN L. SHULMAN, ESQ. **
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136 East 57th Street
New York, New York 10022
(212) 758-2020

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? [ ] Yes [ ] No

(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for this motion? [ ] Yes [ ] No

If No, explain why not:

Will the parties agree to maintain the status quo until the motion is heard? [ ] Yes [ ] No

* Coblence, Warner, Hamilton & Smith
1370 Avenue of the Americas
New York, N.Y. 10019 (212) 957-9700

Brief statement of the relief requested:

Appellant requests that the mandate of this Court issued on June 5, 1989, be recalled in order that Appellant be permitted to file a Petition for Rehearing and Rehearing

In Banc, and that said Petition be ordered filed within fourteen (14) days after this Motion is granted.

Complete Page 2 of This Form

By: *(Signature of attorney)*

/s/ Milton A. Rudin

Appearing for: *(Name of party)*
Cathy Yvonne Stone

Appellant or Petitioner:
[X] Plaintiff

Signed name must be printed beneath

Milton A. Rudin

Date

July 31, 1989

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is granted and the mandate of this Court issued June 5, 1989 is recalled. Appellant should file a brief not to exceed 10 pages within 14 days of the date of this order and the appellee may file an opposing brief not to exceed 10 pages within 7 days thereafter. The issue to be briefed should be confined to the issue of how the Alabama Court's finding of fraud affects our determination regarding Stone's laches.

No oral argument is granted.

Ellsworth Van Graafeiland
Richard J. Cardamone
Lawrence W. Pierce
Circuit Judge

Date

** Lawrence I. Fox, Esq.
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(filed Aug 24, 1989)

APPENDIX G-6
88-7860

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CATHY YVONNE STONE, an Individual,

Plaintiff-Appellant,

V

HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a Division of CHAPPELL & CO., INC., A Delaware Corporation, ABERBACH ENTERPRISES, LTD., A New York Corporation, ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee Corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee Corporation, WESLEY H. ROSE AND ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee Corporation, and MILENE MUSIC, INC., a Tennessee Corporation,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

RUDIN AND APPEL
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OF COUNSEL:
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OF COUNSEL:
KENNETH E. WARNER

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STATUTES

17 U.S.C. §101 8

Pursuant to Fed.R.App.P. 40 and this Court's August 24, 1989 Order, Appellant submits this Petition for Rehearing. For the reasons set forth in Section II, Appellant respectfully suggests that the rehearing be held in banc.

I. THE ALABAMA SUPREME COURT'S FINDING OF FRAUD DEFEATS THE LACHES DEFENSE

There was no finding of fraud in connection with the 1967-1968 Alabama proceedings when this Court rendered its decision. Summary judgment had been entered against Appellant on that claim by the Alabama trial court. Thus this Court was not called upon to decide whether that fraud excused Appellant's delay or otherwise defeated the laches defense. The Alabama Supreme Court's finding that legal fraud was committed by Robert Stewart, Irene Smith "and others" (including Appellees) and that therefore, the 1967-1968 orders should be set aside, requires this Court to address that issue, vacate its initial decision and reverse the District Court's summary judgment.

The Alabama Supreme Court has held that Stewart, Smith "and others" concealed (1) the "clear and convincing" evidence of Appellant's paternity; (2) Stewart's belief, shared by Acuff/Rose, that Appellant was entitled to a share of the Williams, Sr. estate and of the renewal copyrights; and (3) that between 1969 and 1975, Stewart set aside a portion of the estate income in case Appellant asserted a claim. [Alabama Opinion at 6-8, 10-20 and 22-24.] The court records, including the 1952 custody/support agreement which the Alabama Court opined might have sufficed to legitimate Appellant [Id., at 31,

n.19], were sealed so that the information contained therein, just like the sealed adoption records, would remain secret forever.

The "others" include Appellees Williams, Jr., Rose and, as their assignees or successors, the "Acuff/Rose Interests". Stewart's 1962 correspondence on behalf of Irene Smith, Williams, Jr.'s guardian, during which he recognized Appellant's rights and suggested ways to terminate them, was with counsel for Rose [Opinion at 16-17]. When Irene Smith concealed the evidence of paternity, she did so as Williams, Jr.'s guardian and administratrix of the estate [*Id.* at 23-24]. When, during his testimony in the 1967-1968 proceedings, Stewart concealed what he knew about Appellant, her potential rights and his efforts to cut them off, he was the attorney for Smith and the estate [*Id.* at 12, 20, 22]. When Stewart withheld Appellant's share of the estate income, he so advised counsel for Williams, Jr. [*Id.* at 19]. He also advised Williams, Jr.'s counsel in 1974 that Appellant had picked up her homestead allowance and warned that "further trouble may ensue" [*Id.*]. Williams, Jr. never disavowed Stewart's actions and went along with the concealment.

Even if one assumes he was not actively involved in the fraud, Williams, Jr. is charged with Stewart's (and Smith's) fraud by virtue of his relationship with them. Stewart was representing Williams, Jr. (by way of Smith) when he conspired with Acuff/Rose's counsel. After Williams, Jr. was represented by other counsel, Stewart plotted with that counsel as he had with Acuff/Rose's counsel. Under Alabama law, "[i]t is elementary that omissions and commissions of an attorney at law are to

be regarded as acts of the client whom he represents." *Lawrence v. Gayle*, 312 So.2d 385, 387 (Ala. 1975). As Acuff/Rose's principal with respect to the renewals, Williams, Jr. is charged with their conduct as well. *Arkel Land Co. v. Cagle*, 445 So.2d 858, 862 (Ala. 1983) [agent's (attorney) misrepresentation imputed to principal (client)].

The Acuff/Rose Interests also must be charged with the fraud because they conspired with Stewart and Smith. [Opinion at 16-17]. Under Alabama law, a co-conspirator is liable for the acts of each of the other co-conspirators and is liable to anyone injured by those acts. *Stokely v. State*, 49 So.2d 284, 291 (Ala. 1950). To the extent Tennessee law might apply, the result is the same. *Hardwin v. Caldwell*, 695 S.W.2d 189 (Tenn. Ct. App. 1985).

The reason for the concealment is obvious. Had Appellant's renewal rights been recognized in 1968, she would have been entitled to publish the songs through a publisher of her own choosing. Acuff/Rose no longer would be the only authorized publisher and its substantial income from that catalogue would be cut in half. Williams, Jr.'s writer's share of the income also would be cut in half. Lest there be any doubt about their motives, one need only note how vigorously these Appellees fought the Aberbach Interests' claim for six years. *Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 403 F.Supp. 420 (M.D. Tenn. 1975), *aff'd*, 570 F.2d 554 (6th Cir. 1978).

Berlin and the Aberbach Interests joined the conspiracy in 1973 when they learned of the custody/support agreement and agreed to conceal it's [sic] contents. [Opening Brief at 33-34]. Their reason for doing so was the same as Acuff/Rose's – to avoid sharing the income

with Appellant. Those who join a conspiracy are liable for all the acts in furtherance of the conspiracy, even those which occurred before they joined. *Killough v. State*, 438 So.2d 311 (Ala. Cr. App. 1982); *State v. Lequire*, 634 S.W.2d 608 (Tenn. Cr. App. 1981). Appellees conspired to deprive Appellant of her renewal rights even though they owed a fiduciary duty to her and held her share of the income in trust for her. *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.*, 221 F.2d 569 (2d Cir.), *modified*, 223 F.2d 252 (2d Cir. 1955).

This Court, like the Alabama Supreme Court, should refuse to reward Appellees' unconscionable conduct and reject their laches defense. As stated in *Holmberg v. Armbrecht*, 327 U.S. 392 (1946):

> "If want of due diligence by the plaintiff may make it unfair to pursue the defendant, fraudulent conduct by the defendant may have prevented the plaintiff from being diligent and may make it unfair to bar appeal to equity because of mere lapse of time.
>
> Equity will not lend itself to such fraud and historically has relieved from it. It bars a defendant from setting up such a fraudulent defense . . . . " 327 U.S. at 396-97.

In *McIntire v. Pryor*, 173 U.S. 38 (1899), the Supreme Court rejected a laches defense because the defendant had engaged in fraud which was as calculated and flagrant as found by the Alabama Court, stating:

> "in case of actual fraud, a delay, even greater than that permitted by the statute of limitations, is not fatal to the plaintiff's claim [and] where the fraud is clearly proven, the court will look with much more indulgence upon any disability

> under which the plaintiff may labor, as excusing his delay." 173 U.S. at 54, 59.

Had there been no fraud, the 1967-1968 rulings probably would have been different [Opinion at 24]. Appellant (and her adoptive parents) would have known Williams, Sr. had not abandoned her, that upon his death she was adopted by his mother, and that she had been placed for adoption by Smith for the latter's selfish motives.[1] Knowing of Williams, Jr.'s [sic] desires and Mrs. Stone's treating her as one of the family would have made Appellant and the Deuprees think very differently about pursuing her ancestry in 1967. At the very least, these issues must be tried.

Even if Appellees' fraud does not excuse Appellant's delay, it defeats the laches defense under the unclean hands doctrine. This doctrine is as strongly rooted in societal interests and public policy as is laches. As stated in *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806 (1945):

> "That doctrine is rooted in the historical concept of [a] court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abetter of iniquity.' . . . Thus while 'equity does not demand that its suitors shall have led blameless lives,' . . . as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue.

---

[1] Smith's selfish motives extended to defeating Appellant's attempt to inherit under Mrs. Stone's will. *Hamilton v. Smith*, 86 So.2d 283 (Ala. 1956).

> " . . . Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor." 324 U.S. at 814-15.

A defendant's unclean hands defeats its laches defense. *Bott v. Four Star Corp.*, 807 F.2d 1567, 1576 (Fed. Cir. 1986); *TWM Mfg. Co. v. Dura Corp.*, 592 F.2d 346, 349 (6th Cir. 1979), *aff'd. after remand*, 722 F.2d 1261, 1268 (6th Cir. 1983); *National Circle, Daughters of Isabella v. National Order of Daughters of Isabella, 270 F. 723, 732-34 (2d Cir. 1920), cert. denied*, 255 U.S. 571 (1921); *Haas v. Leo Feist, Inc.*, 234 F. 105, 108 (S.D.N.Y. 1916). Appellees' fraud constitutes unclean hands and defeats their laches defense.

The defense should also fail because Appellees cannot establish any prejudice other than circumstances which their fraud produced. Had there been full disclosure in 1967 and 1968, the issues would have been adjudicated while the witnesses whose deaths this Court identified as a form of prejudice (873 F.2d at 625) were still alive. The "circumstances giving rise to this appeal [would not] have spanned over two decades" (*Id.*) without a resolution. To the extent there is support for the Court's conjecture that witness recollections had faded during 1981-1985 (*Id.*), those recollections undoubtedly would have been more vivid in 1968. To the extent Appellees entered into transactions "premised on the apparent certainty" of their ownership of the renewal rights by reason of the 1967-1968 rulings (*Id.* at 625-26),[2] that

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[2] Appellant disputes this assumption. *See*, Petition for Rehearing at 6-10. There is no danger that innocent third parties

(Continued on following page)

apparent certainty was the product of calculated fraud. Appellees should not be able to claim prejudice from circumstances they created. *Kama Rippa Music, Inc. v. Schekeryk*, 510 F.2d 837, 843-44 (2d Cir. 1975); *National Circle, Daughters of Isabella v. National Order, Daughters of Isabella, supra*, 270 F. at 734.

Appellees had no reasonable basis to assume Appellant believed her renewal rights were worthless or had abandoned them, *Galliher v. Cadwell*, 146 U.S. 368, 372 (1892), for they had obtained through fraud orders that she had no such rights. Because of those orders, Mrs. Deupree told Appellant everything regarding her relationship to Williams, Sr. had been decided against her. 873 F.2d at 622. Appellees always have had the information necessary to determine Appellant's rights and could have filed an action to declare those rights at any time before 1981. This knowledge and ability to preserve relevant evidence by way of litigation defeats the claim of prejudice. *Hill v. W. Bruns & Co.*, 498 F.2d 565, 568-69 (2d Cir. 1974); *Vega v. The Malula*, 291 F.2d 415, 419-20 (5th Cir. 1961).[3]

(Continued from previous page)

will suffer if Appellant's rights are recognized. Licenses granted by one copyright owner are binding on all co-owners. *McKay v. Columbia Broadcasting Systems, Inc.*, 324 F.2d 762, 763 (2d Cir. 1963). Recognition of Appellant's status will not invalidate any of the licenses or in any way affect the licensees' rights thereunder.

[3] The Alabama Court's decision also disposes of Appellees' other defenses as a matter of law. The fraud tolls the statute of limitations until Appellant learned the contents of

(Continued on following page)

Finally, as this Court recognized, laches is found only where the prejudice proximately results from the delay. 873 F.2d at 625. Appellees concede they relied on the 1967-1968 rulings as having determined Appellant's status and rights adversely to her and those orders being *res judicata* or collateral estoppel in any claim she might later assert. [Joint Brief at 30]. In and after 1975, Appellees acted in reliance on those orders being final, not on Appellant's failure to claim her renewal copyright interests between 1981 and 1985 [*Id.*, Jt. App. 250a, 253a]. The Alabama Court has set those orders aside, rejecting the argument that Appellant's third-party claim for such relief was time-barred. [Opinion at 27-29]. Any economic detriment from now having to recognize Appellant's statutory rights[4] results from the 1967-1968 orders having been set aside in the Alabama litigation, not Appellant's failure to file this lawsuit before 1981. The necessary proximate cause is missing.

(Continued from previous page)

the custody/support agreement in 1984. *Holmberg v. Armbrecht, supra*. Even if the limitations period began earlier, Appellant is entitled to an accounting back to September 12, 1982. *Mount v. Book-of-the-Month Club, Inc.*, 555 F.2d 1108 (2d Cir. 1977). The fraud defeats Appellees' *res judicata* and collateral estoppel defenses [Opinion at 27]. That Appellant is an heir [*Id.* at 29-40] means, without more, that she owns an interest in those renewals governed by the 1909 Act. *DeSylva v. Ballentine*, 351 U.S. 570 (1956). That Appellant is a natural child means, without more, that she owns an interest in those renewals governed by the 1976 Act. 17 U.S.C. § 101. This Court can order a speedy and efficient resolution of this matter by remanding with directions to order the requested accounting without the need for further proceedings.

[4] Which is not prejudice for laches purposes. *In re Bohart*, 743 F.2d 313, 327 (5th Cir. 1984).

II. THE REHEARING SHOULD BE IN BANC

The rehearing should be in banc because this Court's decision conflicts with *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960), which held that an author's assignment does not eliminate his executor's renewal interest under § 24 of the 1909 Act because that interest belongs only to the executor. "The right to obtain a renewal copyright and the renewal copyright itself exist only by reason of the Act and are derived solely and directly from it." 362 U.S. at 375. The Court held it would be an impermissible judicial redesigning of the statute to eliminate the executor's Congressionally-granted renewal rights by applying the "usual rule" that an executor takes estate assets subject to the testator's prior contracts. *Id.* at 377.

This Court's decision does just that by adding a deadline for establishing renewal copyright ownership which is not in the statute and which will differ depending on how different courts view necessarily unique combinations of delay, excuses and prejudice.[5] Before this Court's decision, members of the specified classes became possessed of their interests automatically upon the occurrence of the statutorily-prescribed circumstances. *Miller Music*, 362 U.S. at 375-78. This Court's judicial legislation makes unpredictable what Congress sought to simplify and make certain by enacting the 1976 Act.

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[5] The laches deadline in this case was inserted by way of a summary judgment motion held under submission for 13 months and deprives Appellant of her statutory rights for the 37-43 years remaining in the renewals.

An additional reason for an in banc rehearing is that the decision conflicts with *Menendez v. Holt*, 128 U.S. 514 (1888) and *New Era Publications ApS v. Henry Holt & Co., Inc.*, 873 F.2d 576 (2d Cir. 1989) by applying laches to divest Appellant of her renewal rights rather than only denying her an accounting of the pre-complaint licensing of those rights. This conflict will generate confusion as to the parties' rights under the Alabama Court's decision, which establishes the factual prerequisites to Appellant's ownership of the renewals. Appellees will argue this Court's decision precludes Appellant from asserting such rights. The resulting uncertainty, not only between the parties but also in the public's mind because of the press reports of the conflicting decisions, will have to be settled in future litigation.

Appellant is prevented from presenting these arguments in greater detail by the page limit set in the August 24, 1989 order, and respectfully directs the Court's attention to pages 19-31 of her Petition for Writ of Certiorari filed on August 19, 1989. That Petition, excluding the Appendices, is attached hereto.

Dated: September 6, 1989

Respectfully submitted,

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ADDENDUM A

[Omitted, see App. F-1]

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9601 Wilshire Boulevard, Suite 800, Beverly Hills, California 90210:

On September 6, 1989, I served the foregoing document described as follows: PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC on the interested parties in this action by placing two true copies thereof enclosed in three separate sealed envelopes with postage thereon fully prepaid in the United States Mail at Beverly Hills, California, each labeled with one of the following addresses:

SEE ATTACHED SERVICE LIST

I declare that I am employed in the office of an attorney who is a member of the bar of this Court at whose direction the service was made.

/s/ Christine H. Anderson
Christine H. Anderson

Subscribed to and sworn before me
on this 6th day of September, 1989.

/s/ Helen Montrose
Notary Public

OFFICIAL SEAL
HELEN MONTROSE
Notary Public - California
Los Angeles County

(SEAL)

My Comm. Exp. Apr. 23, 1991

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APPENDIX H-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CATHY YVONNE STONE, an individual,	CASE NO. 85 Civ. 7133
Plaintiff,	THIRD AMENDED COMPLAINT FOR (1)
vs.	DECLARATORY RELIEF,
HANK WILLIAMS, JR., BILLIE JEAN WILLIAMS BERLIN, CHAPPELL MUSIC COMPANY, a division of CHAPPELL & CO., INC., a Delaware corporation, ABERBACH ENTERPRISES, LTD., a New York corporation, ACUFF-ROSE-OPRYLAND MUSIC, INC., a Tennessee corporation, MILENE-OPRYLAND MUSIC, INC., a Tennessee corporation, WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., a Tennessee corporation, and MILENE MUSIC, INC., a Tennessee corporation,	ACCOUNTING, DAMAGES, IMPOSITION OF CONSTRUCTIVE TRUST AND/OR A RESULTING TRUST, AND (2) CONSPIRACY TO DEFRAUD AND BREACH FIDUCIARY DUTY
Defendants.	DEMAND FOR JURY TRIAL

Plaintiff alleges as follows:

PARTIES

1. Plaintiff Cathy Yvonne Stone is a citizen of the State of Maryland.

2. Plaintiff is informed and believes and based thereon alleges that defendant Hank Williams, Jr. (hereinafter "Williams Jr.") is, and at all times herein relevant was, a citizen of the State of Alabama.

3. Plaintiff is informed and believes and based thereon alleges that defendant Billie Jean Williams Berlin (hereinafter "Berlin") is, and at all times herein relvant [sic] was, a citizen of the State of Louisiana.

4. Plaintiff is informed and believes and based thereon alleges that Chappell Music Company, a division of Chappell & Co., Inc. (hereinafter "Chappell"), is a corporation incorporated under the laws of the State of Delaware having its principal place of business in New York, New York. Plaintiff is informed and believes and based thereon alleges that defendant Aberbach Enterprises, Ltd. (hereinafter "Aberbach") is a corporation incorporated under the laws of the State of New York, having its principal place of business in New York, New York. Both Aberbach and Chappell have, at all times relevant hereto, been engaged in the business of music publishing.

5. Plaintiff is informed and believes and based thereon alleges that defendants Acuff-Rose-Opryland

Music, Inc. (hereinafter "ARO Music") and Milene-Opryland Music, Inc. (hereinafter "MOM Music") are corporations organized under the laws of the State of Tennessee, doing business in New York, New York, and are, and at all times hereto relevant have been, in the business of music publishing.

6. Plaintiff is informed and believes and based thereon alleges that defendant Wesley H. Rose (hereinafter "Rose") is, and at all times herein relevant was, a citizen of the State of Tennessee.

7. Plaintiff is informed and believes and based thereon alleges that defendant Roy Acuff (hereinafter "Acuff") is, and at all times herein relevant was, a citizen of the State of Tennessee.

8. Plaintiff is informed and believes and based thereon alleges that Fred Rose Music, Inc. (hereinafter "Fred Rose") was at all times herein relevant a corporation incorporated under the laws of the State of Tennessee, having its principal place of business in Tennessee.

9. Plaintiff is informed and believes and based thereon alleges that defendant Milene Music, Inc. (hereinafter "Milene") was at all times herein relevant a corporation incorporated under the laws of the State of Tennessee, having its principal place of business in Tennessee.

10. Plaintiff is informed and believes and based thereon alleges that individual defendants Rose and Acuff are the Trustees in Liquidation for stockholders of Fred Rose and Milene, which claim to have heretofore acquired renewal rights in musical compositions and

works written and/or composed by Hiriam "Hank" Williams (hereinafter "Williams Sr.").

11. Plaintiff is informed and believes and based thereon alleges that at all times herein relevant each defendant was and is acting as the agent of each other.

JURISDICTION AND VENUE

12. This court has jurisdiction over plaintiff's first claim for relief as alleged herein because such claim arises under the copyright laws of the United States, and more particularly, the Copyright Act of 1976, 17 U.S.C. §§101, *et seq.*

13. This court has jurisdiction over plaintiff's first and second claims for relief pursuant to the provisions of Title 28, United States Code, §1332(a)(2), providing jurisdiction in this court to hear and decide matters between parties of diverse citizenship where the amount in controversy exceeds the sum of $10,000.00, exclusive of interest and costs.

14. This court has jurisdiction over plaintiff's second claim for relief because it results from the transactions and occurrences which form the basis of plaintiff's first claim for relief and this court therefore has ancillary and/or pendant jurisdiction over the second claim for relief.

15. Plaintiff is informed and believes and based thereon alleges that corporate defendants Chappell, Aberbach, ARO Music, MOM Music, Milene and Fred Rose, and Acuff and Rose in their individual capacities and as Trustees in Liquidation for stockholders of Fred

Rose and Milene, have continuously and systematically conducted substantial and extensive business within this judicial district. Plaintiff is informed and believes and based thereon alleges that individual defendants Berlin and Williams Jr. have continuously and systematically done business in the State of New York and within this judicial district through their agents, Aberbach, Chappell, ARO Music, and MOM Music, respectively, in that, among other things, Aberbach, Chappell, ARO Music and MOM Music pay Williams Jr. and Berlin royalties and other compensation derived from their respective interests in the renewal copyrights which, as alleged more fully hereinbelow, are the subject of plaintiff's complaint. Plaintiff's cause of action therefore arises out of the contacts and transaction of business in New York by defendants, and each of them.

16. Defendants, and each of them, may be found in this judicial district as a result of, among other things, the transaction of business alleged hereinabove at paragraph 15, and venue is properly laid in the United States District Court, Southern District of New York, pursuant to 28 U.S.C. §1400(a).

FIRST CLAIM FOR RELIEF FOR DECLARATION OF RIGHTS, ACCOUNTING, DAMAGES, AND IMPOSITION OF CONSTRUCTIVE TRUST AND/OR RESULTING TRUST

17. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1 through 16 of this Third Amended Complaint as though fully set forth herein.

18. Plaintiff is the natural daughter of Williams Sr. and Bobbie Jett (hereinafter "Jett"). Plaintiff's natural father, Williams Sr., died five days before plaintiff was born and plaintiff never knew her natural mother, Jett. Plaintiff was twice adopted as an infant and the identity of her natural parents had been actively concealed from plaintiff. Plaintiff discovered, within less than three years last past, sufficient facts and information to enable her to commence this action for declaratory relief, accounting, damages, and imposition of constructive and/or resulting trust, and plaintiff could not, prior to that time, through reasonable diligence, have discovered the facts or information necessary to commence this action.

19. Plaintiff is informed and believes and based thereon alleges that defendants Berlin, as widow of Williams Sr., and Williams Jr., as alleged son of Williams Sr., claim to be the only persons in whom the relevant United States Copyright Acts vest the right to renew the copyrights to all musical compositions which were written in whole or in part by Williams Sr. Plaintiff is informed and believes and based theron [sic] alleges that claims of copyright registration have been recorded with the Register of Copyrights in the names of Berlin and Williams Jr. and/or their respective transferees with respect to the renewal copyrights to all musical compositions which were written in whole or in part by Williams Sr.

20. Plaintiff is informed and believes and based thereon alleges that defendants Aberbach, Chappell, ARO Music, and MOM Music claim to have received assignments, or otherwise claim to be the successors in interest to those who have received the assignments, from Berlin

and Williams Jr. of all the renewal copyrights to all musical compositions which were written in whole or in part by Williams Sr. Plaintiff is informed and believes that Chappell, Aberbach, ARO Music and MOM Music, or their predecessors in interest, have recorded such assignments with the Register of Copyrights.

21. Plaintiff has notified defendants, and each of them, that she is the natural daughter of Williams Sr., and the equitable owner of no less than an undivided 33 1/3% interest in all renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed under either the Copyright Act of 1909 or the Copyright Act of 1976. These renewal copyrights include, but are not limited to, the musical compositions identified in Exhibit 1 attached hereto and fully incorporated herein by this reference.

22. All defendants deny the claims of plaintiff as set forth in paragraph 21 hereinabove and plaintiff is informed and believes that defendants, rely, in part, in their denial, on an order of the Circuit Court of Montgomery County, Alabama, Case No. 27960 entitled *In the Matter of the Guardianship Estate of Randall Hank Williams, a Minor.* A true and correct copy of that order is attached hereto and fully incorporated herein as Exhibit 2. Plaintiff is informed and believes that defendants, and each of them; contend that such order purports to prohibit plaintiff from obtaining any interest in and to the Williams Sr. copyrights under the federal copyright law.

23. To the extent Exhibit 2 purports to in any manner govern the renewal rights of plaintiff in the musical compositions written in whole or in part by Williams Sr.,

it is, and has been since the day it was entered, a legal nullity without any force or effect because, among other reasons: (1) The Circuit Court of Montgomery Alabama did not have subject matter jurisdiction to determine whether plaintiff had any rights, whether vested or contingent, to the renewal rights to the United States copyrights to the musical compositions written in whole or in part by Williams Sr.; (2) Plaintiff was at the time of such hearing a 15 year old minor, and did not receive proper notice, and was not properly or competently represented in connection with the proceedings which preceded the entry of such order or in connection with the subsequent proceedings with respect to such order since, among other things, no appeal was taken from that order even though grounds for appeal clearly existed; (3) The purported determination of plaintiff's rights under the Copyright Act, whether vested or contingent, were entirely unnecessary to the issues which were properly submitted to the court, i.e., whether or not a contract previously executed in favor of defendant ARO Music's predecessors-in-interest was valid and binding, and such order therefore has no *collateral estoppel* or *res judicata* effect on plaintiff; (4) The copyright law has been specifically amended by the Copyright Revision Act of 1976, effective as of January 1, 1978, to provide that plaintiff, as the natural daughter of Williams Sr., is entitled to an undivided ownership interest in and to the renewal copyrights which include, but are not limited to, those musical compositions identified in Exhibit 1; and (5) Exhibit 2 was entered in furtherance of an unlawful conspiracy perpetrated on plaintiff by defendants Rose, Acuff, Fred Rose,

Milene, ARO Music and MOM Music, as more specifically alleged herein in plaintiff's second claim for relief.

24. Plaintiff contends that:

(a) Plaintiff is the natural daughter of Williams Sr.;

(b) Plaintiff is, and has at all times been, the equitable owner of and is entitled to not less than an undivided 33 1/3% interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1909;

(c) Plaintiff is, and has at all times been, the equitable owner of and is entitled to not less than an undivided 33 1/3% interest in all renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1976;

(d) Plaintiff is entitled to her appropriate ownership interest in all foreign copyrights of all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of either 1909 or 1976;

(e) Plaintiff is entitled to receive from defendants, and each of them, an immediate accounting of all royalties, revenue, income, monies, and other consideration, derived directly or indirectly from the exploitation, whether domestically or foreign, of all musical compositions written in whole or in part by Williams Sr.; that she should be forthwith paid all monies or other compensation owed to her pursuant to her undivided ownership interest in said Williams Sr. compositions; and that she is

entitled to a continuing accounting for the full term of renewal of copyrights throughout the world and to her appropriate share of said copyrights and all such monies and compensation;

(f) The order attached hereto as Exhibit 2 is null and void to the extent it purports to affect or impact any of the rights of plaintiff whatsoever and/or to the extent it purports to affect or impact any of plaintiff's interests in the renewal copyrights to the musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of either the Copyright Act of 1909 or the Copyright Act of 1976;

(g) Plaintiff be awarded her proportionate entitlement to all copyrights to which she is entitled as the natural daughter of Williams Sr.; and

(h) Defendants be ordered to convey to plaintiff legal title to her proportionate share of the renewal rights, or other rights, to the United States copyrights in and to the musical compositions written in whole or in part by Williams Sr., and that defendants be ordered to execute all documents necessary to effectuate the recordation and/or registration in the United States Copyright Office, of plaintiff's interests in such renewal or other copyrights.

25. Defendants, and each of them, dispute plaintiff's contentions and contend that plaintiff has no equitable, legal or other ownership interest in the renewal copyrights in any musical compositions written in whole or in part by Williams Sr., including, but not limited to, those alleged hereinabove at paragraph 21, that the order

attached hereto as Exhibit 2 is valid and binding as to plaintiff, and that no accounting need be rendered.

26. An actual controversy therefore exists between plaintiff and defendants, and each of them, pursuant to 28 U.S.C. §2201, and plaintiff desires a judicial determination of her rights and, in particular, a declaration that:

(a) Plaintiff is the natural daughter of Williams Sr.; (b) Plaintiff is and has been the true legal owner of her interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. since the commencement of the respective United States copyright renewal terms, and is entitled to not less than an undivided 33 1/3% interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1909;

(c) Plaintiff is and has been the true legal owner of her interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. since the commencement of the respective United States copyright renewal terms, and is entitled to not less than an undivided 33 1/3% interest in all renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1976;

(d) Plaintiff is entitled to her appropriate ownership interest in all foreign exploitation of all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of either 1909 or 1976;

(e) Defendants, and each of them, render an immediate accounting of all royalties, revenue, income, monies and other consideration, derived directly or indirectly, whether domestically or foreign, from the exploitation of all musical compositions written in whole or in part by Williams Sr., and that plaintiff be forthwith paid all monies or other compensation owed to her pursuant to her undivided ownership interest in said Williams Sr. compositions and to continue to account to plaintiff with respect to said monies and compensation;

(f) The order attached hereto as Exhibit 2 is null and void to the extent it purports to affect or impact any of the rights of plaintiff whatsoever and/or to the extent it purports to affect or impact any of plaintiff's interests in the renewal copyrights to the musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of either the Copyright Act of 1909 or the Copyright Act of 1976;

(g) Plaintiff be awarded her proportionate entitlement to all copyrights to which she is entitled as the natural daughter of Williams Sr.; and

(h) Defendants convey to plaintiff legal title to her proportionate share of the renewal rights, or other rights, to the United States copyrights in and to the musical compositions written in whole or in part by Williams Sr., and that defendants be ordered to execute all documents necessary to effectuate the recordation and/or registration in the United States Copyright Office, of plaintiff's interests in such renewal or other copyrights.

27. Plaintiff has further been damaged as a result of the acts of defendants, and each of them, in an amount in

excess of $10,000.00, but not yet ascertainable. Plaintiff prays for leave to amend this Complaint at the time of trial to set forth the amount of the damages suffered according to proof.

28. Plaintiff has no adequate remedy at law and prays that a constructive or resulting trust be imposed and all money or other consideration received from her equitable interest in the foregoing renewal copyrights to the Williams Sr. musical compositions be paid into court and held in trust pending the determination of this action in order to avoid the perpetration of a fraud upon her and the unjust enrichment of defendants, and each of them.

29. 17 U.S.C. §505 states as follows:

> "In any civil action under this title, the court in its discretion may allow the recovery of full costs or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs."

Plaintiff has had to retain the services of an attorney to prosecute this action and prays that she be given leave to amend this Complaint to set forth the full amount of fees incurred at the trial or the conclusion of this action.

SECOND CLAIM FOR RELIEF AGAINST ARO MUSIC, MOM MUSIC, ROSE, ACUFF, FRED ROSE, AND MILENE FOR CONSPIRACY TO DEFRAUD AND BREACH FIDUCIARY DUTY

30. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1 through

16 and 18 through 20 of the Third Amended Complaint as though fully set forth herein.

31. Robert B. Stewart (hereinafter "Stewart") was at all times herein relevant an attorney licensed to practice law in the State of Alabama and from in or about 1953 through in or about August, 1975, he acted as attorney for the estate of Hiriam "Hank" Williams (hereinafter "the estate").

32. The estate was initially administered by Williams Sr.'s mother, Lillian Williams Stone, until her death in or about 1955. At that time, the administratrix's responsibilities were purportedly assumed by her daughter, and Williams Sr.'s sister, Irene Smith (hereinafter "Smith"). Smith continued to act as administratrix of the estate until in or about 1969 when she resigned as administratrix because she was convicted for cocaine smuggling in Laredo, Texas. At that time, Stewart assumed responsibility as administrator of the estate and continued as attorney for the estate.

33. Smith and Stewart knew of plaintiff since her birth on January 6, 1953 and knew, since that time, that she had claims and rights as the natural child of Williams Sr. While acting in their respective capacities as administrator and/or attorney for the estate, Smith and Stewart had a confidential relationship with plaintiff; they were charged with the highest degree of fiduciary duty to plaintiff; they were obligated to fully advise her or her appropriate representatives of all material facts and theories which could affect her claims, rights and interests arising from the fact that she is the natural daughter of Williams Sr.; they were required to to take whatever

measures were necessary to protect her interest; and they were prohibited from placing the interest of another potential heir over her interest.

34. At all times alleged herein, defendants ARO Music, MOM Music, Rose, Acuff, Fred Rose and Milene (hereinafter "Co-conspirator Defendants"), knew or had reason to know that plaintiff was the natural daughter of Williams Sr. and Williams Jr.'s half-sister, that Smith and Stewart were the administrators and/or the attorney for the estate, that Smith and Stewart had a confidential and fiduciary relationship with plaintiff and that Smith and Stewart were charged with the highest degree of fiduciary duty to plaintiff.

35. Co-conspirator Defendants, Smith and Stewart knew, or had reason to know, that the Alabama state Court, in making determinations regarding the estate, would depend in great measure on the integrity and thoroughness of Stewart and would depend on the facts and issues presented to the Court by Stewart.

36. Commencing at some time in at least 1960 or 1961, and continuing thereafter as more specifically alleged hereinbelow, and with full knowledge of the facts alleged hereinabove at paragraphs 31, 32, 33 and 35, Co-conspirator Defendants, Smith and Stewart knowingly and willfully conspired and agreed among themselves, and each of them, to unlawfully exploit and misuse Stewart and Smith's fiduciary relationship with plaintiff to (1) prevent plaintiff from perfecting her interest in the Williams Sr. renewal copyrights and (2) to permit Co-conspirator Defendants to misappropriate plaintiff's interest

in the Williams Sr. renewal copyrights for their sole and exclusive benefit.

37. The specific overt acts which constitute the conspiracy alleged hereinabove include, but are not limited to, the following:

(a) Stewart and Co-conspirator Defendants' agent met (i) in New York City sometime in between May 10, 1960 and February 16, 1962; (ii) in San Francisco, California sometime between July 24, 1962 and September, 1962, and (iii) in Nashville, Tennessee sometime in September, October or November, 1962, all in furtherance of the conspiracy alleged hereinabove.

(b) Co-conspirator Defendants' agents and Stewart communicated in writing and provided each other documents and information in furtherance of the conspiracy on or about February 8, 1960, February 18, 1960, March 16, 1960, February 16, 1962, February 28, 1962, April 27, 1962, May 1, 1962, and July 5, 1962.

(c) The foregoing written communications and meetings were, in whole or in part, to create a scheme to enable Co-conspirator Defendants to permanently divest plaintiff of her interest in the Williams Sr. renewal copyrights through a "token" or "nominal" payment without her knowledge and/or to conceal and suppress plaintiff's existence and interest in the Williams Sr. renewal copyrights from plaintiff and from the Alabama state Court.

(d) Co-conspirator Defendants, Smith and Stewart elected to conceal plaintiff's existence and her interest in the Williams Sr. renewal copyrights from plaintiff and the Alabama state Court. This concealment and suppression

of material facts from the Alabama state Court continued until in or about March, 1967 when Williams Jr. and his mother, Audrey Mae Williams (hereinafter "Audrey"), filed an action against Smith to terminate the estate and to rescind a contract executed by Smith in or about 1963 which purportedly sold Williams Jr.'s interest in the Williams Sr. renewal copyrights to Co-conspirator Defendants. This action filed by Audrey and Williams Jr. disclosed to the Alabama state Court, for the first time, the existence of plaintiff and her interest in, in part, the Williams Sr. renewal copyrights.

(e) In furtherance of the conspiracy, Co-conspirator Defendants, Stewart and Smith created a scheme to prematurely divest plaintiff of her rights in the Williams Sr. renewal copyrights (i) before she reached the age of majority and could learn of and perfect her interest in the Williams Sr. renewal copyrights, and (ii) before pending amendments to the United States copyright laws specifically granting rights to illegitimates would be enacted, the pendancy of which was expressly known by Co-conspirator Defendants, Stewart and Smith.

(f) In furtherance of the conspiracy, Smith, Stewart and Co-conspirator Defendants arranged, in or about May, 1967 (i) for the appointment of the guardian ad litem of their choice to purportedly represent plaintiff's interest in the Williams Sr. renewal copyrights, (ii) for her interest to purportedly be decided in state, not federal court, despite the fact that they knew that the federal courts had exclusive jurisdiction and expertise over the subject matter, and (iii) to have plaintiff's interest in the

Williams Sr. renewal copyrights determined in a proceeding initiated by Williams Jr. and Audrey which was entirely unrelated to plaintiff's contingent interest in the Williams Sr. renewal copyrights.

(g) As a result of the manipulation and conspiracy alleged hereinabove, the Alabama state Court entered, on or about January 30, 1968, the order attached hereto as Exhibit 2 which purports to affect plaintiff's rights.

(h) Co-conspirator Defendants, Smith and Stewart knew, or had reason to believe, at all times relevant hereto, that, under existing Alabama law, plaintiff would be entitled, within one year after her twenty-first birthday, on January 6, 1974, to file appropriate legal action to set aside the order attached hereto as Exhibit 2, or to set aside any order entered before her twenty-first birthday which purported to affect her rights.

(i) Stewart and Co-conspirator Defendants' agent communicated in writing, in part, on November 1, 1973, April 4, 1974, and April 11, 1974 to suppress and conceal relevant facts and information from plaintiff, both before and after she reached the age of majority. The estate was closed in or about August, 1975 and Stewart, in furtherance of the conspiracy, and contrary to his fiduciary obligations, failed to advise plaintiff or any of her representatives of any pertinent facts, theories, or of any rights or claims she may have either before or after she reached the age of majority.

38. Co-conspirator Defendants ARO Music, MOM Music, Acuff, Rose, Milene and Fred Rose, did the acts and things herein alleged in furtherance of the conspiracy

and above-alleged agreement between said Co-conspirator Defendants on the one hand, and Stewart and Smith on the other hand.

39. As a proximate result of the wrongful acts herein alleged, plaintiff has not received any income from her interest in the Hank Williams, Sr. renewal copyrights and has, as a result thereof, been damaged in a sum that is not yet ascertainable but in excess of $10,000.00.

40. As a proximate result of the wrongful acts herein alleged, plaintiff has been generally damaged in a sum that is not yet ascertainable, but in excess of $10,000.00.

41. The acts of Co-conspirator Defendants Acuff, Rose, Fred Rose, Milene, ARO Music and MOM Music alleged herein, were done knowingly, maliciously, and oppressively, and plaintiff is therefore entitled to punitive and/or exemplary damages in the sum of at least $10,000,000.00.

WHEREFORE, plaintiff prays for judgment as follows:

ON THE FIRST CLAIM FOR RELIEF

1. For declaratory judgment that:

(a) Plaintiff is the natural daughter of Williams Sr.;

(b) Plaintiff is and has been the true legal owner of her interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. since the commencement of the respective United States copyright renewal terms, and is entitled to

not less than an undivided 33 1/3% interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. and renewed pursuant to the provisions of the Copyright Act of 1909;

(c) Plaintiff is and has been the true legal owner of her interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. since the commencement of the respective United States copyright renewal terms, and is entitled to not less than an undivided 33 1/3% interest in the renewal copyrights to all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of 1976;

(d) Plaintiff is entitled to her appropriate ownership interest in all foreign exploitation of all musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of the Copyright Act of either 1909 or 1976;

(e) Defendants, and each of them, render an immediate accounting of all royalties, revenue, income, monies, and other consideration, derived directly or indirectly, whether domestically or foreign, from the exploitation of all musical compositions written in whole or in part by Williams Sr. and that plaintiff be forthwith paid all monies or other compensation owed to her pursuant to her undivided ownership interest in said Williams Sr. compositions and continue to so account to plaintiff;

(f) The order attached hereto as Exhibit 2 is null and void to the extent it purports to affect or impact any of the rights of plaintiff whatsoever and/or to the extent it purports to affect or impact any of plaintiff's interests

in the renewal copyrights to the musical compositions written in whole or in part by Williams Sr. renewed pursuant to the provisions of either the Copyright Act of 1909 or the Copyright Act of 1976;

(g) Plaintiff be awarded her proportionate entitlement to all copyrights to which she is entitled as the natural daughter of Williams Sr.; and

(h) Defendants convey to plaintiff legal title to her proportionate share of the renewal rights, or other rights, to the United States copyrights in and to the musical compositions written in whole or in part by Williams Sr., and that defendants be ordered to execute all documents necessary to effectuate the recordation and/or registration in the United States Copyright Office, of plaintiff's interests in such renewal or other copyrights.

2. For damages according to proof at trial;

3. For the imposition of a constructive or resulting trust on all monies derived by defendants from plaintiff's equitable interest in all renewal copyrights to all musical compositions written in whole or in part by Williams Sr.;

ON THE SECOND CLAIM FOR RELIEF

4. For damages according to proof at trial;

5. For exemplary damages according to proof at trial but in the sum of at least $10,000,000.00;

ON ALL CLAIMS FOR RELIEF

4. For reasonable attorneys' fees;

5. For costs of suit herein incurred; and

6. For such other and further relief as this court deems just and proper.

Dated: Beverly Hills, California

September 26, 1986

RUDIN, RICHMAN & APPEL
A Professional Corporation
VINCENT H. CHIEFFO
JAMES A. GOODMAN

By: /s/ James Goodman
James A. Goodman
9601 Wilshire Boulevard
Penthouse
Beverly Hills, California 90210

COBLENCE & WARNER
Marjorie Smith
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New York, New York 10019

F. Keith Adkinson
1312 Eighteenth Street, N.W.
Washington, D.C. 20036

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: Beverly Hills, California

September 26, 1986

H-1.23

RUDIN, RICHMAN & APPEL
A Professional Corporation
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Attorneys for Plaintiff

APPENDIX I-1

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1988-89

Catherine Yvonne Stone

87-269

v.

Gulf American Fire and Casualty Co., et al.

Appeal from Montgomery Circuit Court

(CV-85-1316-K)

(Released July 5, 1989)

MADDOX, JUSTICE.

This appeal involves the estate of the late Hiriam "Hank" Williams and concerns the rights of Catherine Yvonne Stone, an illegitimate child who, in 1985, was declared by the trial court in this proceeding to be the natural child of Hank Williams, and the major questions presented are whether two final judgments entered in 1967 and 1968, which determined that Stone had no rights to share in the estate, can be reopened because of an alleged "legal fraud."

Stone appeals from a summary judgment against her third-party complaint, in which she asked that the two former judgments be set aside, which judgments had been entered in favor of third-party defendants Irene Smith; Jones, Murray and Stewart, P.C.; Gulf American Fire and Casualty Company; American States Insurance

Company (as successor in interest of Gulf American); and several fictitiously named parties.[1]

This case began as an action for declaratory judgment filed by Randall Hank Williams (hereinafter "Williams, Jr."), along with Roy Acuff and Wesley Rose, the trustees in liquidation of Fred Rose Music, Inc., and of Milene Music, Inc., seeking a declaration that Stone was barred from establishing that she is the natural child of Hank Williams and from asserting any claim or entitlement to his estate or to any interest or royalties flowing therefrom.[2] Stone filed a counterclaim on these issues, and, in

---

[1] Irene Smith and Robert Stewart were the administratrix and administrator of the Williams estate, and Gulf American wrote the bond. The estate of Robert B. Stewart was dismissed as a third-party defendant by Stone on March 25, 1987.

[2] In their complaint for declaratory judgment, they asked for the following relief:

> "2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiriam "Hank" Williams or the aforesaid copyright interests or renewals thereof.
>
> "3. That in the event this Court alters, modifies or otherwise changes the prior Orders and Judgments in Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam Hank Williams and the copyright and renewal copyright interests of the musical compositions of Hiriam 'Hank' Williams.

(Continued on following page)

addition, the third-party complaint that now constitutes the basis of this appeal.

In her third-party complaint, Stone alleged an intentional, willful, fraudulent, and conspiratorial concealment from the court of her identity and potential claim to the estate of Hank Williams.[3] She requested that the estate be reopened and that she receive her proportionate share of the estate,[4] that she be awarded punitive damages, and that the sureties for the estate, Gulf American and American States, compensate her for damages not recovered against the other third-party defendants or real parties in interest.

(Continued from previous page)

"4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

[3] In her first claim for relief in her third-party complaint Stone named Smith, Stewart, and several fictitiously named real parties in interest and alleged, inter alia, that "[f]rom in or about 1953 through sometime in 1967, Smith, Stewart and [Jones, Murray and Stewart], through Stewart, and real parties in interest C, D, E, F, G, H, I, J, K, M, and N, intentionally, willfully and fraudulently concealed Stone's identity, existence, claim, and rights as [*a*] natural child of Hank Williams, Sr. from the Montgomery County Circuit Court in contravention of their respective fiduciary obligations to Stone and in contravention of their respective obligations to the court."

[4] Stone's first claim for relief requested the following:

"1. That the estate of Williams, Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void.

"2. That Stone be entitled to share her proportionate interest in all property and income of the estate."

In the proceedings below, the trial court entered summary judgment in favor of Williams, Jr., Acuff, and Rose on all issues contained in their original complaint and in Stone's counterclaim, with the exception of the issue of Stone's paternity, which it reserved for trial, and the trial court entered summary judgment in favor of all third-party defendants, including those fictitiously named, on Stone's third-party complaint, in which she asked, among other things, that the estate be reopened because of legal fraud. After a trial on the issue of paternity, the court found that Catherine Yvonne Stone is the natural child of Hank Williams. No appeal was taken from this judgment of paternity, and this finding is undisputed on appeal.[5]

Statement of the Facts

An understanding of the unique facts underlying this action is requisite to an understanding of this case, and it is because of these unique facts that we fashion the relief we do in this case. The trial judge entered a lengthy order in which he detailed the facts. We could include those findings, which we find to be supported by the record, in this opinion, but we think that a summary of those facts will be sufficient.

On October 15, 1952, Hank Williams entered into an agreement with Bobbie W. Jett relative to the custody and support of an unborn child carried by Jett. The agreement was prepared by and executed in the presence of Robert

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[5] Stone did not appeal the adverse ruling on her counterclaim either. We will discuss that issue in this opinion under the section "Relief Granted" *infra*.

B. Stewart, an attorney in the general practice of law in Montgomery, Alabama, who was one of the third-party defendants. The agreement provided, in part, as follows:

> "This agreement made this 15th day of October, 1952, by and between Hank Williams of Montgomery, Alabama, and Bobbie W. Jett of Nashville, Tennessee,
>
> "WITNESSETH
>
> "WHEREAS, the said Bobbie W. Jett is at the present time pregnant and expects to be delivered of a child on or about the 1st day of January, 1953, and the said Hank Williams may be the father of said child, and,
>
> "WHEREAS, it is the mutual desire of both parties to provide for the necessary expenses of the said Bobbie W. Jett and of the child to be born,
>
> "IT IS NOW, THEREFORE, mutually agreed by and between the said Bobbie W. Jett and the said Hank Williams as follows:
>
> " . . . That the said Hank Williams will provide room and board for the said Bobbie W. Jett in Montgomery, Alabama, from October 15th until the date said child is born . . . .
>
> " . . . That said Hank Williams shall pay all doctors and hospital bills in connection with the confinement of the mother and birth of the child . . . .
>
> " . . . Within 30 days after the birth of said child, the said Hank Williams shall provide a one-way plane ticket to the said Bobbie W. Jett from Montgomery to another place in California which she may designate . . . .

" . . . After the birth of said child, both parties agree that it shall be placed with Mrs. W. W. Stone of Montgomery [Hank Williams's mother], and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. During said two year period that the child is in custody of Mrs. Stone, both the *father*, Hank Williams, and the said Bobbie W. Jett shall have the right to visit said child at convenient and reasonable hours. *Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported . . . by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties, that is, during the winter months or school months the child shall remain with Hank Williams and during the summer months or school vacation months the custody shall be in the mother. The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting with the mother.* During the time that the child is in the custody of the *father*, Hank Williams, the mother shall have the right to visit it at reasonable times, and at reasonable hours, and during the time it is in the custody of the mother during the summer months the *father* shall have the same privilege of visitation.

> " . . . In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by the agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.
>
> "IN WITNESS WHEREOF, the parties have hereunto set their hands and on the day and date first above written.
>
> "/s/ _____
> "Bobbie W. Jett
>
> "/s/ _____
> "Hank Williams"

(Emphasis added).

On January 1, 1953, Hank Williams died intestate. Five days later, Bobbie Jett gave birth to a baby girl; she named the child Antha Bell Jett. By agreement, the child was left with Hank Williams's mother, Mrs. Lillian Williams Stone, and Jett left the state. Mrs. Stone immediately instituted adoption proceedings, and a final decree of adoption was entered on December 23, 1954. The child's name was changed to Catherine Yvonne Stone.

Shortly thereafter, on February 26, 1955, Lillian Stone died. Other family members were either unable or unwilling to care for the child, and, thus, at the age of two, she became a ward of the State. The child remained in foster homes until she was eventually adopted on April 23, 1959, at the age of six, by a Mobile couple,

George and Mary Deupree. Her name was then changed to Cathy Louise Deupree.

In that year, an action was brought on behalf of Williams, Jr., to obtain court approval of a contract between Fred Rose Music, Inc., and Williams, Jr., concerning his interest in the copyright renewals of his father. The matter of the Stone child was not raised in that proceeding, even though the record now before us shows that the parties to that contract knew of the agreement executed by Williams, Sr., and also that the State of Alabama, by and through its Department of Pensions and Security, knew of her parentage. Then, in 1967, Audrey Williams,[6] the mother of Williams, Jr., filed a petition in Montgomery Circuit Court for final settlement of the estate. She also instituted related proceedings in 1968, concerning the guardianship estate of Williams, Jr. At the time of the 1967 and 1968 proceedings, Irene Smith, the sister of Hank Williams, was the administratrix of the estate. It was in Smith's answer to Audrey Williams's petition that the court was advised, apparently for the first time, of the existence of the agreement and of the potential claim of the Stone child. In both the 1967 and the 1968 proceedings, the court appointed Drayton Hamilton, a Montgomery attorney, to serve as the child's guardian ad litem. Hamilton had previously served as her guardian ad litem in 1963 in proceedings relating to the estate of Lillian Stone; however, the record shows that in 1963, Hamilton knew only that Stone was an adopted child of Lillian Stone *and was not aware of her natural parentage.*

---

[6] Audrey Williams and Hank Williams divorced in 1952.

During 1967 and 1968, Stone lived in Mobile with her adoptive parents. Hamilton notified the Deuprees of the proceedings, but they refused to participate in any matters involving the child's natural father. Despite the Deuprees' adverse position, Hamilton continued to represent the child and actively attempted to establish her rights. Even so, on December 1, 1967, Judge Richard P. Emmet, of the Montgomery County Circuit Court, issued an order stating that Stone had no right to inherit from the estate of Hank Williams. In a second order issued on January 30, 1968, in the related guardianship estate case of Williams, Jr., Judge Emmet again reiterated that Stone had no right to inherit from the estate. In neither proceeding did the court address the issue of Stone's paternity. After the court's adverse ruling, the guardian ad litem sought permission to appeal on behalf of the Stone child; however, the court denied him permission, and he did nothing further on the child's behalf.[7]

Despite the court's rulings in the 1967 and 1968 proceedings, once Stewart became the administrator of the estate in 1969, he began setting aside money for Stone in the event that she ever claimed an interest in the estate. However, the estate was closed in August 1975, without further incident.

The record shows that it was not until 1974, when Stone was 21 years of age and attending the University of Alabama, that the truth of her paternity was ever suggested to her. During that year, she was informed that the

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[7] For a more detailed discussion of why the guardian ad litem did not appeal, see *infra* at pp. 24-26.

Montgomery Circuit Court was holding certain funds for her from the *estate of Lillian Stone*. She was not informed that Stewart had been setting aside money for her. All the court records pertaining to the 1967 and 1968 proceedings were sealed. Stone traveled to Montgomery and received the proceeds of the *Lillian Stone estate*, and it appears that it was at that time that she began to seriously seek information concerning her natural parentage.

On October 17, 1979, Stone arranged a meeting with Emogene Austin of the Alabama Department of Pensions and Security for the purpose of verifying her paternity. The record shows that at that time she apparently did not know the name of her natural mother but suspected that Hank Williams was her natural father. Ms. Austin revealed the agency's information to her concerning her background, including information indicating that her natural father was Hank Williams; that information shows that the State of Alabama knew of her background from almost the beginning. However, throughout this time, all of the records concerning her paternity remained sealed by the Montgomery Circuit Court, and she had no knowledge of the existence of the custody and support agreement or of the fact that Stewart had been setting aside her share of the estate, even after the 1967 and 1968 decrees were entered.

Stone continued to search for and retrieve documents and other information bearing on this subject through the early part of 1985. On July 1, 1985, she filed an action in Montgomery Circuit Court requesting that documents relating to her paternity, formerly placed under seal by the Montgomery Circuit Court, be released to her. On August 5, 1985, Stone sent a demand letter to Williams,

Jr., Acuff, and Rose, advising them of her claim in the estate and asking to share in the copyright renewals of her father, Hank Williams. Subsequently, on September 10, 1985, Williams, Jr., Acuff, and Rose filed the action for declaratory judgment that eventually led to this appeal.

Issues

The primary issues presented by this appeal are:

I.) whether the former judgments rendered in the 1967 and 1968 proceedings involving Stone's right to share in the estate of Hank Williams can be reopened by reason of legal fraud on the court; and, if so,

II.) whether Stone's claim to set aside the former judgments is barred by the equitable doctrine of laches; and, if not, then

III.) to what relief, if any, is Stone entitled?

In determining the primary issues, we also address the following questions:

a) whether the administrator or the attorney for the estate, having independent knowledge of Stone's claims to the estate, had a duty to notify the court of these facts;

b) whether the trial court's failure, in the 1967 and 1968 proceedings, to grant the guardian ad litem permission to appeal the adverse ruling on behalf of Stone constitutes an error of law sufficient to warrant modification of the judgment;

c) whether an illegitimate child is entitled to inherit from her natural father;

d) whether the doctrines of res judicata and collateral estoppel are applicable to the issues involved in this case; and finally,

e) whether Stone's adoption, two years after the death of her natural father, precludes her from establishing her paternity for the purpose of intestate succession.

Fraud

We now address the first issue, concerning legal fraud. Stone argues that the trial court erred in entering a summary judgment for the third-party defendants in this case because, she says, the evidence shows that they fraudulently conspired to keep certain facts relating to her existence, identity, and potential claim to the estate of Hank Williams concealed from the court. We agree.

The record contains substantial evidence from which a factfinder could conclude that third-party defendants Robert Stewart and administratrix Irene Smith and others withheld from the court before and during the 1967 and 1968 proceedings material facts concerning the issue of Stone's paternity. The evidence that follows indicates the series of events that transpired both prior to and following the death of Hank Williams that directly affected the fate of the child for whom Williams had unequivocally accepted responsibility by executing an agreement which contains some equivocation, but in which he referred to himself three times as the "father." These events ultimately resulted in the foreclosure of any contract right that the child might otherwise have had under the 1952 custody and support agreement, as well as the adverse judgments concerning her right to inherit, which are now the subject of this appeal.

The record shows that on October 15, 1952, Hank Williams accompanied Bobbie Jett to the law offices of his

attorney, Robert Stewart, to discuss a legal arrangement concerning an unborn child being carried by Jett. Mrs. Lillian Stone, Hank Williams's mother, was also present. At this meeting, Stewart prepared the custody and support agreement involved in the present lawsuit. According to Stewart's testimony in the 1967 proceedings, he represented only Hank Williams at the time the agreement was executed and at no time was Bobbie Jett or the unborn child represented by counsel.

After Hank Williams's death in January 1953, it was Stewart who prepared the letters of administration that were issued to Williams's mother, Lillian Stone, as administratrix. Although Stewart knew of the child's existence, identity, and potential claim to the estate, because he had drafted the custody and support agreement only three months earlier, the letters of administration contained only the names of the following persons as heirs and distributees of the estate:

> "Billie Jean Jones 'who states she is the widow,'
>
> "Randall Hank Williams, Jr.,
>
> "Mrs. Irene Williams Smith, a sister,
>
> "Elonzo H. Williams, father, and
>
> "Lillian S. Stone, mother."

It is interesting to note that the list did include Billie Jean Jones, "who states she is the widow" of the deceased; yet, *it did not include Stone.*

Over the course of 22 years following the death of Hank Williams, Stewart remained actively involved in the affairs of the Williams family. Throughout the years 1953 to 1975, Stewart served as the attorney for the estate, and

from 1969 through 1975 he also served as the administrator of the estate.

In 1953, Stewart even acted as Lillian Stone's attorney in her action to adopt the child. The record shows that at all times, Mrs. Stone held the child out to Stewart and to the world as the daughter of her deceased son, Hank Williams. This is evidenced by the following notes taken during an investigation conducted by the Montgomery County Department of Public Welfare, prior to Mrs. Stone's adoption of the child:

"1/28/53

> "Mrs. Stone discussed her situation with ease throughout the entire interview, but cried during the time that she was talking. She said that she was in the office in regard to a child which was born on January 6, 1953. She explained that the child is the daughter of Bobbie Webb Jett *and that the father of the child is her son, Hank Williams, deceased*. She brought with her a letter stating to whom it may concern and signed by Mr. Williams. It said that he would be responsible for the delivery of this child at the hospital where the mother desired. . . . She mentioned that she took care of Miss Jett throughout the pregnancy . . . [and] that her son took care of all the expenses during this time.
>
> " . . . She stated that Miss Jett had left the child at her home during the time that she was making a visit to Butler County, her home, and that she does not know what Miss Jett plans to do. She stated that she does not wish to keep the child unless she can adopt her and that she would be tremendously interested in doing so. *While crying, she stated that she knew that this is what her son would want her to do, and he once commented that he did not feel that Miss Jett was a*

suitable person to take care of the child. Mrs. Stone seemed quite devoted to the child and it was apparent that she was very desirous to keep this child as it appeared that she would feel closer to her son. She went on to say that Miss Jett lives in Nashville and that all their papers are with [Mrs. Stone's] lawyer, Mr. Robert B. Stewart. . . .

"* * * *

"During this interview, Mrs. Stone commented that she had a heart ailment and worker gathered that it must be somewhat serious. She said that Mr. Stewar[t] was not in accord with their adopting the child because of this heart condition and I went into a discussion with her asking her whether or not she was able to take care of the child and what plan would be made for its future in the event that this baby was left parentless. She stated that her daughter, Mrs. Irene Smith of Portsmouth, Va. would be glad to take the child and I wondered if she would be interested in taking her at this time. Mrs. Stone would not want her to take the child as she would like to have the baby herself." (Emphasis added.)

The adoption became final on December 23, 1954, following which Stewart continued to remain closely associated with the Williams family, and, in particular, with Irene Smith, Hank Williams's sister. The following letter, dated April 6, 1953, when the child was three months old, evidences the relationship of Smith and Stewart with regard to the estate of Hank Williams and the Stone child:

"Dear Mr. Stewart:

"* * * *

"The idea you have about making Billy [Hank Williams's reputed widow] a legal wife isn't bad at all but I fear that once you accept

her as one she will try every trick in the book. I keep thinking about the time when it will be necessary to renew copyrights on Hank's songs, as his legal wife she will be the one to do that unless of course that is one of the rights she gives up. Somehow I just can't picture her giving anything up.

"* * * *

"Thanks for sending the royalties check. It sure came in handy . . . . I want to thank you again for looking out for me. You know if mother adopts that child there will be a new will. Tee [Smith's husband] says that if she adopts it and then can't take care of it, he is not going to let me take it. Keep this under your hat, mabey [sic] it will never be necessary for me to have the child at all. I feel that the poor child would have a lot better chance in this life if it were adopted by someone that would never know of its origin at all. It won't be three years before someone will start telling it that it isn't exactly like other children. Oh, well I guess I sound like I just don't want mother to change her will but really that isn't it at all. I don't want a thing that we don't work for ourselves and whether or not I get that house or not doesn't bother me in the least. I am only thinking about that child. It may be the one thing that will help mother live to be a hundred[;] lets hope so. She seems to love it very much and will perhaps give it a wonderful chance."

Lillian Stone died on February 26, 1955. At that time, Smith became the administratrix of Hank Williams's estate and remained administratrix throughout the 1967 and 1968 litigation, until she relinquished her duties to Stewart in 1969. Also, after Lillian Stone's death, Smith and Stewart became directly involved in the decision-

making process concerning the fate of the child. The record shows that after Smith refused to fulfill her previous commitment to care for the child in the event that it ever became necessary, she initiated procedures to make the child *a ward of the State*. She was successful in her efforts, in part, because Mr. Stone, Lillian Stone's spouse, was unable to care for the child alone. The records of the Montgomery Department of Public Welfare reflect these events, as follows:

> "3/10/55
>
> "Mr. Bob Stewart, lawyer for Mrs. Stone, [deceased], called Miss Rainer on this date and stated that Mrs. Stone's daughter, Irene Smith, would like to come to the office to discuss what would be best for Kathy Stone, the adopted daughter of Mrs. Stone . . . .
>
> "Later: Mr. and Mrs. Smith in office by appointment. Mrs. Smith stated that she felt that it would be for the best interest of Kathy if the child was placed for adoption and was no longer associated with Hank Williams' family. She explained that she and her husband were devoted to the child and would be perfectly willing to keep the child but feels that there would always be publicity and gossip connected with this baby. Mrs. Smith states that she knows she agreed to take Kathy in the event anything happened to her mother and that she is still willing to take the child but feels strongly that the child would always be subjected to ugly gossip and vicious rumors and would possibly be hurt very deeply in later years by this talk.
>
> "Mr. and Mrs. Smith are at present living in Dallas, Texas, where Mr. Smith is in the Navy but Montgomery is their home and they plan to come back [here] in five (5) years when Mr.

Smith can retire. They also plan to return to Montgomery each year for the Hank Williams Memorial and Mrs. Smith stated that she could just hear the tongues wagging now when Kathy would ride down the street in an automobile as part of the parade to commemorate Hank. For these reasons Mrs. Smith feels that Kathy could lead a much more normal life if she was placed for adoption with another family. Mrs. Smith seems to be very sincere and earnest in her opions [sic] about Kathy's future, and reiterated that she was not trying to get out of raising this child. She does not want this department to think that she is shirking her duty or ashamed to take the child and kept asking if we did not agree that she was right in her way of thinking. Both Mr. and Mrs. Smith stated that if Montgomery were not their home and they did not plan to reside here permanently at the end of Mr. Smith's tour of duty with the Navy, that they would not hesitate to take Kathy and raise her as their own child. They feel that so many people know about the child however that whereever [sic] they might live, rumor and gossip would catch up with them and Kathy would always be affected by unfavorable publicity.

"We explained to Mr. and Mrs. Smith that as the adoption had been granted final, Mr. Stone was the legal parent . . . and we wondered how Mr. Stone felt about placing the child for adoption. Both Mr. and Mrs. Smith stated that Mr. Stone was a very emotional person and he would like for the Smiths to take Kathy and rear her. They have not talked to him as yet about what would be best for Kathy but they feel that they would have a hard time making Mr. Stone see their point of view. . . .

"At the present time, Kathy is staying part time with the Smiths and part time with Marie Glenn . . . . Mrs. Smith stated that Kathy was

much happier with Marie than she was with the Smiths as she cried continuously while they had her. Mrs. Smith stated that Kathy was a very nervous child and seemed to miss Mrs. Stone a great deal. Mrs. Smith wondered if it was all right for Kathy to remain with Marie until other plans could be worked out. Worker told Mrs. Smith that we felt wherever the child was happiest would be all right until permanent plans could be made.

" . . . Mrs. Smith stated that she was very anxious to have the placement of the child settled as she had already received numerous telephone calls asking what would become of the child. She states that she did not realize so many people knew about this child but she has had telephone calls from Ohio and other various states regarding Kathy and who Kathy would live with now. Mrs. Smith seems to feel there will be a great deal of publicity regarding Kathy's placement. Mrs. Smith was assured that all of our dealings would be strictly confidential and it would be handled as quietly as possible. . . .

"3/11/55

"Mr. and Mrs. Smith and Mr. Stone in office late in the afternoon. Mr. Stone apologized that he was in his work clothes and said that he came straight from work. Mrs. Smith stated that she had told Mr. Stone their feelings regarding their not taking Kathy and he seemed to understand. Mr. Stone stated that he could not possibly take care of Kathy and he guessed it would be best for her to be placed for adoption. Mr. Stone was quite emotional and cried but after a lengthy discussion stated again that he could see nothing else to do but have the child placed for adoption. He seemed sincere in his decision and signed a Boarding Home Agreement with

this Department. We explained to Mr. Stone that we would make an appointment with him to go to the Juvenile Court to sign a Petition and would place Kathy in a boarding home until permanent plans could be made for the State to assume her custody.

"3/15/55

"Worker met Mr. Stone at the Juvenile Court after an appointment had been made. Mr. Stone told Mrs. Dees that he felt this was the best plan for Kathy although it hurt him very deeply to give her up. Mr. Stone was very emotional and cried during the interview . . . .

"3/17/55

"Mrs. Smith in office by appointment as we explained that we would like as much background information on the alleged father of Kathy as possible as it would help in finding the most suitable home for the child. Mrs. Smith seemed to thoroughly understand and was quite willing to give any information and cooperate in every way. Mrs. Smith told us that Hank Williams was six feet, two inches (6' 2") tall, had a rather dark complexion which she would classify as almost olive. She said that she has the same skin which worker would say was almost olive. Mr. Williams was a brunette with brown eyes. He attended school through the tenth grade but did not like school too well. She added that he was very capable and made excellent grades in the things that he liked. He started singing at the age of five (5) and started playing the guitar at age seven (7). Mrs. Smith stated that she would consider her brother a musician, poet, composer, and philosopher."

On April 22, 1955, less than two months after Lillian Stone's death, Stone was made a ward of the State.

The record shows that Stewart acted as the attorney for the estate as early as 1953 and that Smith became the administratrix in 1955, but neither apprised the court of the evidence of the child, despite their intimate knowledge of her claims as a potential heir to the estate and as a possible creditor under the terms of the agreement to provide support. The following letter, dated February 28, 1962, written to Stewart by attorney Harold Orenstein, legal counsel for Wesley Rose, shows Stewart's knowledge of Stone's potential right to share in her father's copyright renewals:

> " . . . From the documents which you have furnished to me, Catherine Yvonne Stone (born Antha Belle Jett) was returned to the State of Alabama Welfare department after the death of Lillian Stone, and then re-adopted by persons unknown. *Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened.* However, we note that the child was given a certain sum of money for its 'homestead' rights in the property of Lillian Stone. . . . *It would seem that some token payment to the State of Alabama Welfare Department again on behalf of this child may or may not be indicated (depending upon your viewing of the Alabama law). There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.* We should like to have further comment from you regarding the foregoing.
>
> " . . . I shall confer with Wesley [Rose] after he has received [a] copy of this letter and, after having heard from you regarding Catherine

Yvonne Stone, proceed to draw up an agreement which we can present both to the courts and to Audrey Williams." (Emphasis added.)

In a second letter, dated July 5, 1962, Stewart responded:

"None of this would seem to affect the child's statutory right to copyright renewal. . . .

" . . . Since the statutory right of the child comes to it through its father, and since the federal courts have held this right belongs to an illegitimate, *we may be faced with a difficult problem, and certainly one we would not want to litigate.*

"As possible alternatives we can:

"a. Consider that by the adoption all rights under the renewal statutes have been lost.

"b. Try to explain the matter to our Welfare Department, which does not want the child ever to know its background, *but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.*

"c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. *If we use this procedure, the guardian ad litem will have to be told what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.*

"I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with an understanding of the facts by the court. My

> alternatives are not much better, but perhaps you can improve on them with a little thought." (Emphasis added.)

No proceedings concerning the estate of Hank Williams were ever instituted on behalf of the Stone child. However, as stated earlier, in 1967, when Audrey Williams petitioned the court for final settlement of the estate on behalf of Williams, Jr., Smith, as administratrix, finally advised the court that there might possibly be an illegitimate child of the deceased somewhere, and the court then appointed Drayton Hamilton to serve as the child's guardian ad litem in both the 1967 and 1968 proceedings.[8]

The record shows that during the 1967 proceedings, Hamilton called Stewart to testify concerning his knowledge of the circumstances surrounding the child's claim to the estate. Again, despite Stewart's extensive knowledge of these circumstances from his involvement with the child's father, mother, grandmother, and aunt, he revealed nothing, with the sole exception of producing the original custody and support agreement. Certainly he did not reveal the contents of all the correspondence and

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[8] It is interesting to note that Smith, who was the administratrix for the estate during 1967 and 1968, also acted as the guardian for Williams, Jr., during these proceedings. Further, she had also acted as the guardian for Williams, Jr., while administratrix, in 1963, in the proceeding to allow Williams, Jr., to contract with Fred Rose Music, Inc., concerning his interest in his father's copyright renewals. It is also interesting that this procedure is in substance the one suggested by Stewart in his July 5, 1962, letter, as alternative "c", that is, a legal way to cut off Stone's right to copyright renewals she was entitled to under federal law, even though illegitimate.

information he knew concerning Stone's adoption and the information furnished to the Department of Pensions and Security. Smith, too, aside from advising the court of the existence of the child, remained silent about what she knew.

Stewart's plan, as proposed in his July 5, 1962, letter to Wesley Rose's attorney, suggested that the person appointed as guardian ad litem "might be vigorous in asserting this right [to copyright renewals]." Hamilton was vigorous. He fought for the child's rights, even without material evidence concerning her paternity. Hamilton argued that Hank Williams had accepted the child as his own and had made legal arrangements to have full custody and control of the child, and that if the law did not recognize her right to inherit simply because she was illegitimate, then the law was unconstitutional and should be changed.[9] Despite Hamilton's efforts, with the

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[9] In fact, on May 28, 1968, just 4 months after Judge Emmet denied the guardian ad litem permission to appeal, the Supreme Court of the United States, in *Levy v. Louisiana*, 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968), commented on the harsh common law concept that illegitimate children were *nullius fillius*, as follows:

> "We start from the premise that illegitimate children are not 'nonpersons.' They are humans, live, and have their being. They are clearly 'persons' within the meaning of the Equal Protection Clause of the Fourteenth Amendment.
>
> "* * * *
>
> "Why should the illegitimate child be denied rights merely because of his birth out of wedlock?

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evidence that it had before it at the time, the trial court ruled against the child in both the 1967 and 1968 proceedings.[10] Hamilton, then as the guardian ad litem, requested permission to appeal the rulings on behalf of the child,

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> He certainly is subject to all the responsibilities of a citizen, including the payment of taxes and conscription under the Selective Service Act. How under our constitutional regime can he be denied correlative rights which other citizens enjoy?"

391 U.S. at 70-71.

[10] In its December 1, 1967, order, the court stated:

> "In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams . . . . "

Furthermore, in its January 30, 1968, decree, the court stated that while it was "impressed with the argument of the Guardian Ad Litem [for Stone]," and "adopt[ed] the sound reasoning . . . that the time is long past due when illegitimate offspring should be afforded adequate property rights," the court, nevertheless, found that Stone had been adopted and that her adoptive parents, after having been notified of the proceedings, "chose not to pursue any action in regard to these proceedings," and that she could not recover.

The trial court's conclusion that adoption precluded an "after-adopted" illegitimate child from inheriting was erroneous, however. This subject is discussed, *infra*, under the heading "Intestate Succession and the Illegitimate Child."

but the court refused to grant permission. Thus, Hamilton's court-appointed representation of the Stone child ended, and nothing further was done on her behalf.[11]

Despite the court's rulings in the 1967 and 1968 proceedings, when Stewart became the administrator of the estate in 1969, he began setting aside a share of the estate for Stone. During that time, in a series of letters to the attorney for Williams, Jr., Stewart wrote that "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." Stewart's concealment with regard to the Stone child continued, and in April 1974 he alerted counsel for Williams, Jr., that Stone had traveled to Montgomery and claimed her homestead that had been set aside for her in the Lillian Stone estate. Stewart wrote: "[Her] ancestry may well be reasonably obvious to her, and further trouble may ensue." However, the estate of Hank Williams was closed in August 1975, without further incident, and the money that Stewart had been setting aside for Stone was distributed along with the other assets of the estate.

The law in Alabama concerning legal fraud has been stated by this Court as follows:

> "To constitute fraud, in its legal signification, it is not necessary that one intend to injure another. . . .

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[11] See our discussion, *infra*, under "Error of Law," concerning the right of a guardian ad litem to appeal an adverse ruling on behalf of a child, and the duties of a guardian ad litem and the duty of the court when a minor's interest is involved.

> " 'If fraud is proved the law will infer an improper motive, and the actual motive of the speaker is immaterial. In other words, it is not essential that the [misrepresentor] be motivated by a desire to injure complainant or to benefit himself; and it makes no difference that his motive was solely to benefit a third person.' "

Duncan v. Johnson, 338 So. 2d 1243, 1250 (Ala. 1976) (quoting C.J.S. *Fraud* § 26). With regard to fraud on the court, this Court has further recognized the following principles:

> " '[Where] the fraud itself [is] to be consummated through the instrumentality of a court of justice, the protection of the court demands that there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault. . . . ' "

Duncan, 338 So. 2d at 1251 (quoting *Bolden v. Sloss-Sheffield Steel & Iron Co.*, 215 Ala. 334, 335, 110 So. 574, 575 (1925)). Stated differently:

> " 'Where [fraud] relates to the conduct of the suit, as where it prevents a party from asserting his rights, there is no fair adversary proceeding, *and equity will interfere.*' "

Eskridge v. Brown, 208 Ala. 210, 211, 94 So. 353, 354 (1922) (quoting 6 *Pom. Eq. Jur.* at 1092) (emphasis added).

The idea that as an attorney, Stewart had a fiduciary relationship with the estate of Hank Williams, his client, is elementary. See *Jones v. Caraway*, 205 Ala. 327, 87 So.

820 (1921); *Kidd v. Williams*, 132 Ala. 140, 143, 31 So. 458 (1901); and *Yonge v. Hooper*, 73 Ala. 119 (1882). In *Yonge*, this Court recognized that

> "[an] [a]ttorney and client sustain to each other the severe relation of trustee and *cestui que trust*, and their dealings together are subject to the same intendments and imputations, as those which obtain between other trustees and their beneficiaries."

Yonge, 73 Ala. at 121.

Furthermore, Stewart, as administrator, and Smith, as administratrix, held the position of a trustee, and their administration of the estate was that of a trust. See *Clark v. Clark*, 287 Ala. 42, 47, 247 So. 2d 361, 365 (1971); *Keith & Wilkinson v. Forsythe*, 227 Ala. 555, 557, 151 So. 60, 61 (1933). In *Maryland Casualty Co. v. Owens*, 261 Ala. 446, 451, 74 So. 2d 608, 612 (1954), this Court recognized that

> "[a]n executor occupies a position of trust with respect to those interested in the estate and is the representative of the decedent, of creditors and of the legatees and distributees."

(Citing *Durden v. Neighbors*, 232 Ala. 496, 168 So. 887, 889 (1936); and *Amos v. Toolen*, 232 Ala. 587, 168 So. 687, 692 (1936).) At the time this estate was being administered, the law of Alabama imposed the following requirements upon an administrator:

> "In making settlements of an administration, the executor or administrator must proceed as follows:
>
> "* * * *
>
> "He must, at the same time, file a statement, on oath, of the names of the heirs and legatees

> of such estate, specifying particularly which are under the age of twenty-one years. . . ."

Tit. 61, § 295, Code of Alabama, 1940, presently Code 1975, § 43-2-502. This Court has held that an administrator who knowingly and willingly conceals from the court administering an estate the name of an heir or distributee, is guilty of such a fraud on the court as to authorize a court of equity to set the decree of settlement aside. See *Fidelity & Deposit Co. of Maryland v. Hendrix*, 215 Ala. 555, 112 So. 117 (1927); and *cf., Leflore By and Through Primer v. Coleman*, 521 So.2d 863 (Miss. 1988); *Smith By and Through Young v. Estate of King*, 501 So.2d 1120 (Miss. 1987); *Matter of Estate of Flowers*, 493 So.2d 950 (Miss. 1986).

We recognize, generally, that mere silence does not constitute fraud; however, a different rule applies where confidential relations or particular circumstances exist. Code 1975, § 6-5-102, provides:

> "Suppression of a material fact which the party is under an obligation to communicate constitutes fraud. *The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case.*" (Emphasis added.)

Furthermore, it has been recognized that

> "[a] fiduciary duty need not spring from a legal relation but may arise from a relation which is merely moral, social, domestic, or purely personal in character, and that fiduciary relations embrace not alone the obviously confidential relations such as attorney and client, principal and agent, guardian and ward, and the like, but also every relation in which as matter of fact there is confidence reposed on one side and a

> resultant domination and influence on the other."

17 C.J.S. *Contracts*, § 154 at 911 (1963).

In the present case, both Stewart and Smith had a legal obligation, as either the attorney or administrator of the estate or because of the particular circumstances involved, to advise the court at the earliest possible date that the Stone child existed and possessed potential claims to the estate as an heir, being a natural child of the deceased, and as a creditor under the child support agreement. *Because the corpus of the estate involved copyright renewals, and because illegitimates could share in such rights under federal law, the "particular circumstances" of this case make the legal obligation a weightier one.* The evidence shows that Stewart, as administrator, and as attorney for Smith, knew that the child had a substantial claim to the copyright renewals.[12] Except for efforts by guardian ad litem Hamilton, no effort on behalf of Stone was made to establish her right to inherit or to establish her contract claim for child support under the 1952 agreement. Likewise, because all of the material circumstances surrounding her paternity were never made known to the court in the ancillary proceedings brought on behalf of Williams, Jr., Stone never received a "fair adversary proceeding," to which she was entitled by law. See *Eskridge*, 208 Ala. 210, 211, 94 So. 353, 354 (1922).[13]

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[12] His withholding of one-half of the monies, even after the favorable 1967 and 1968 decrees, and his 1962 correspondence shows his concern about the child's ever discovering who she was.

[13] We note that, usually, paternity or legitimation proceedings are initiated by a parent of the child; however, in this case

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Whether Stewart and Smith intended to deceive the court or merely sought to protect their own interests or the interests of Williams, Jr., or any other parties interested in the estate, or whether they intended to injure the Stone child is immaterial. Inasmuch as they remained silent about material facts concerning the Stone child, known to them, upon which the law imposed a legal duty to communicate, their actions constituted legal fraud. See Code 1975, § 6-5-102, formerly Tit. 7, § 109, Code of Alabama, 1940.

Further, it would appear that Smith's eventual notification to the court about the agreement, in 1967, was not for the purpose of showing Stone's right to share in the estate, but, rather, for the opposite purpose of showing that she had no right to share in the estate.[14] In her answer to the 1967 action, Smith responded that "she believes Randall Hank Williams is the sole heir of his

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Stone's natural parents were deceased or unavailable and her adoptive parents were hostile in regard to this matter. Furthermore, once Stone was made a ward of the state, the Alabama Department of Pensions and Security could have pursued the child's rights; however, it did not. Finally, while Stone was a ward of the court, Judge Emmet, although convinced that the law regarding illegitimates was not right (and the Supreme Court of the United States so held in *Levy v. Louisiana* shortly thereafter). he, too, failed in his duty to protect the child's right by refusing to grant her guardian ad litem permission to appeal (see discussion, *infra*, "Error of Law").

[14] We have previously noted that this procedure was substantially what Stewart had suggested to Wesley Rose's attorney in 1962 as an alternative way to forever bar Stone from sharing in the copyright renewals.

father, Hiriam 'Hank' Williams, . . . ; however, in the possession of the administratrix are certain documents which may give rise to or affect the rights of another minor to share in said estate . . . . " That answer was prepared by Stewart, who at that time was aware that the *copyright laws allowed illegitimates to inherit.*

We cannot say that Smith's and Stewart's concealment did not affect the judgments ultimately rendered in the 1967 and 1968 proceedings, which denied Stone any right in her natural father's estate. While we recognize that the law in Alabama at that time was unfavorable to illegitimate children with regard to intestate succession from their *fathers*, we cannot say that Stone would not have prevailed upon appeal, because of the strong statements made in *Levy v. Louisiana*, which was extant at the time the appeal would have been pending had one been filed. In short, this Court very well could have reached the result it reached later in the case of *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), and could have recognized Stone's right, as the natural child of Hank Williams, to inherit from his estate. Because of the circumstances surrounding the 1967 and 1968 decrees, there are grounds for setting them aside, at least in part, for the reasons we shall hereinafter state.

Error of Law

At this time, we address another circumstance bearing on the validity of the 1967 and 1968 judgments. The record shows that after the trial court ruled against Stone in both proceedings, Hamilton, as her guardian ad litem, requested permission to appeal the rulings on her behalf.

Even though Judge Emmet thought the law was wrong, he denied Hamilton permission to appeal. After being denied the right to appeal, Hamilton did nothing further on her behalf.

Under the law as it exists today and as it was at the time of the proceedings in question, Stone, or her guardian ad litem acting on her behalf, had the right to appeal the trial court's adverse ruling to this Court. Title 7, § 754, Code of Alabama, 1940 (Recompiled 1958) (now, Code 1975, § 12-22-2) provided for appeals from the circuit court to the Supreme Court, as follows:

> "From any final judgment or decree of the circuit court, or courts of like jurisdiction, or probate court, except in such cases as are otherwise directed by law, *an appeal lies to the supreme court, for the examination thereof as matter of right, on the application of either party, or his personal representative;* and the clerk, register, or judge of probate, must certify the fact that such appeal was taken, and the time when, as part of the record, which gives the supreme court jurisdiction of the case." (Emphasis added).

In addition, Tit. 7, § 786, Code of Alabama 1940 (Recompiled 1958), provided that "a guardian ad litem may take and prosecute an appeal without giving any security for costs of the appeal, and shall not be liable personally for costs of appeal."

In the present case, after the trial court refused to grant permission to appeal the adverse ruling, Hamilton understandably considered his representation of the child ended. The general rule is that "[a] guardian ad litem or next friend is always subject to the supervision and control of the court, and he may act only in accordance with

the instructions of the court." 43 C.J.S. *Infants* § 234, p. 610 (1978). Furthermore, at the time of these proceedings, this Court had construed Tit. 7, § 786, to hold that a guardian ad litem was *personally liable* for the costs of an appeal taken from a decree of the probate court, if the judgment of the lower court was affirmed. See *Ward v. Mathews*, 122 Ala. 188, 25 So. 50 (1898).

Because Stone was a ward of the court, it was the duty of the court, even though it had appointed a representative for Stone, to protect her rights and interests, on its own motion.[15] See 43 C.J.S. *Infants*, § 220, p. 564; see

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[15] We are aware that there are many settlements involving minors made in pending lawsuits, in which courts are called upon to make certain that such settlements are in the best interest of the minor. We further note that Alabama law has been especially sensitive with regard to the rule that any settlements made on behalf of minors be approved by the court. In *Large v. Hayes*, 534 So.2d 1101 (Ala. 1988), this Court recognized the role of the trial court in determining what is in the "best interest of the minor," as follows:

> "This Court has recognized the special nature of an attempted settlement of a minor's claim. Before such a settlement can be approved, there must be a hearing, with an extensive examination of the facts, to determine whether the settlement is in the best interest of the minor. . . .
>
> > " ' "The Court may, upon being advised of the facts, upon hearing the evidence, enter up a valid and binding judgment for the amount so attempted to be agreed upon, but this is not because of the agreement at all – that should exert no influence – but because it appears from

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also *Fletcher v. First Nat'l Bank of Opelika*, 244 Ala. 98, 11 So. 2d 854 (1943) (which recognized that a court of equity is the guardian of all infants within its jurisdiction). Therefore, there can be no question that the trial court's refusal to allow Stone to utilize her right to appeal constituted an error of law, especially when the judge's order that disallowed her claim stated on its face that he did not consider it to be in her best interest.

Code 1975, § 12-11-60, formerly Code 1940, Tit. 13, § 145, provides:

> "(a) When any error of law or fact has occurred in the settlement of any estate of a decedent to the injury of any party, without any fault or neglect on his part, such party may correct such error by filing a complaint in the circuit court within two years after the final settlement thereof. . . .
>
> "(b) The limitations of subsection (a) of this section do not extend to infants or persons of unsound mind who are allowed two years after the termination of their respective disabilities, but in no case to exceed 20 years."[16]

Under this section, an error of law is sufficient to warrant modification of the judgment rendered in the shadow of

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> the evidence that the amount is just and fair, and a judgment therefor will be conservative of the minor's interests." '"

Large, 534 So.2d at 1105 (citations omitted).

[16] The issues of statutes of limitations and laches, as they relate to this case, are treated in our discussion under the heading "Timeliness," *infra*.

that error, even in the absence of fraud. See *Maryland Casualty Co. v. Owens*, 261 Ala. 446, 450, 74 So. 2d 608, 610-11 (1954).

Similarly, Rule 60(b)(6), Ala.R.Civ.P., provides that the court may relieve a party from the operation of a final judgment for any reason justifying such relief. An error of law, such as the one committed by the trial court in the 1967 and 1968 proceedings involving this estate, and that error's attendant consequences, would certainly appear to justify relief under this rule.

Therefore, even absent a finding that the judgments rendered against Stone in 1967 and 1968 were tainted by legal fraud, we would be compelled by the serious nature of the error committed by the trial court in those proceedings to revisit the judgments and modify their operation with respect to her rights, especially since the beneficiaries of those decrees and of the subsequent final settlement are the same individuals who were attempting to secure a judicial determination that would bar her right to share in copyright renewals. At the very least, this error of law aborted any res judicata effect of the 1967 and 1968 decrees.

Timeliness

Having found merit in Stone's claim that the 1967 and 1968 judgments rendered against her should be set aside, we now address whether her delay in asserting

that claim was reasonable.[17] Her claim, being equitable in nature, is governed by the doctrine of laches.

The doctrine of laches is purely equitable in nature and may be invoked to deny equitable relief to one guilty of unconscionable delay in asserting a claim. See *United States v. Olin Corp.*, 606 F.Supp. 1301, 1309 (N.D. Ala. 1985). However, this Court has recognized that the mere lapse of time alone does not establish laches. See *Davis v. Thomaston*, 420 So. 2d 82, 84 (Ala. 1982). Rather, the question of laches is one that must be decided upon the peculiar facts and circumstances of each case. See *Lindley v. Lindley*, 274 Ala. 570, 575, 150 So. 2d 746, 750 (1963); and *Jones v. Boothe*, 270 Ala. 420, 424, 119 So. 2d 203, 207 (1960). In *Multer v. Multer*, 280 Ala. 458, 462, 195 So. 2d 105, 109 (1966), this Court recognized that

> " '[l]aches is not fixed by a hard and fast limit of time, but is a principle of good conscience dependent on the facts of each case.' "

(Quoting *Woods v. Sanders*, 247 Ala. 492, 496, 25 So.2d 141, 144 (1946)). In addition, this Court has held that a party will not be estopped from asserting a fact of which he was ignorant, if upon discovery of that fact, he promptly seeks relief. See *Duncan v. Johnson*, 338 So. 2d 1243, 1254 (Ala. 1976). Stated differently, the doctrine of laches will not apply in the absence of information and knowledge sufficient to put one on notice of a claim. *Id.*; see also *Sims v. Lewis*, 374 So. 2d 298, 305 (Ala. 1979); and *Cotney v.*

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[17] The reader should bear in mind that no issue has been raised as to the timeliness of Stone's paternity action below. Therefore, our discussion concerns only her action to have the prior judgments set aside on the basis of fraud.

Eason, 269 Ala. 354, 357, 113 So. 2d 512, 516 (1959). The law recognizes that for the doctrine of laches to apply, the party claiming the right must have failed to do something that equity would have required him to do. See *Olin Corp.*, 606 F.Supp. at 1309; and *Sims*, 374 So. 2d at 305.

In the present case, the estate of Hank Williams was not finally closed until August 1975. The record shows that only one year earlier, in 1974, was the truth of Stone's paternity first suggested to her, and, at that time, it appears to have been presented merely as theory or speculation. Before 1974, for personal reasons, Stone's adoptive parents had vowed that she never know the identity of her natural father, and it appears that they were successful in concealing this information from her. The record also shows that at the early age of three, Stone had been transferred from Montgomery, permanently, to an adoptive home in Mobile, which effectively removed her from any persons who might have known her identity. In addition, as previously discussed, the record is quite clear that the attorney and administratrix of the estate and others did all that they could, including committing legal fraud, to ensure that she never discover her identity or any facts material to her claim, and the record shows that the State of Alabama, acting through the Department of Pensions and Security, and the courts essentially contributed to the concealment of her parenthood, although aware of it. Any public records, or documents that might have led to her discovery of her paternity at an earlier date had been ordered sealed by the court from the time that she was a small child. Upon retrieving these sealed documents in *1985*, Stone promptly made a demand for her share, and the plaintiffs

instituted this action for a determination of her rights in view of the prior judgments.[18] Based on all of these considerations, we conclude that her attack on, and request for relief from, the prior judgments rendered in this matter are not time-barred.

Intestate Succession and the Illegitimate Child

Having found that the judgments rendered against Stone in the 1967 and 1968 proceedings may be set aside

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[18] We also note that Williams, Jr., Acuff, and Rose are the parties who initiated the litigation from which this appeal arose, and who, themselves, sought a resolution of the matter of Stone's rights in the estate of Hank Williams.

In their complaint for declaratory judgment, Williams, Jr., Acuff, and Rose requested the following relief:

> "2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiriam 'Hank' Williams or the aforesaid copyright interest or renewals thereof.
>
> "3. That in the event his Court alters, modifies or otherwise changes the prior Orders and Judgments in Actions No. 25,056 and 27,960 that this court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam 'Hank' Williams and the copyright and renewal copyright interest of the musical compositions of Hiriam 'Hank' Williams.
>
> "4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

with respect to her right to share in the estate, and, furthermore, having found that her claim to set aside those judgments is not time-barred, we hold that she presented evidence that she was entitled to a determination of her rights, and to reopen the estate, as she requested in her third-party complaint. Therefore, the trial court erred in entering summary judgment on her claim. Because the entire record is before this Court, even though an appeal was not taken from the other judgments, in the interest of judicial economy, we will now address those rights rather than remand the cause to the trial court.

The law concerning the right of an illegitimate child to inherit through intestate succession has seen many changes over the years. At common law, an illegitimate child, who had not been legitimated, was considered the child of no one and could inherit from no one. See *Williams v. Witherspoon*, 171 Ala. 559, 55 So. 132 (1911). The courts considered an illegitimate child "*nullius filius*," the "heir to nobody," and thus, the child "ha[d] no ancestor from whom any inheritable blood [could] be derived." *Lingen v. Lingen*, 45 Ala. 410, 413 (1871) (quoting 1 Wendell's Blackstone, 459).

By 1929, in the case of *Moore v. Terry*, 220 Ala. 47, 124 So. 80 (1929), overruled in part by *Everage v. Gibson*, supra, this Court had recognized that an illegitimate child, who had not been legitimated, could inherit from his mother, but not from his father, even if paternity was shown. This change was also reflected in Code 1940, Tit. 16, § 6, which provided that "[e]very illegitimate child is considered as the heir of his mother, and inherits her estate in whole or in part, as the case may be, in like

manner as if born in lawful wedlock." Later, in *Hudson v. Reed*, 259 Ala. 340, 66 So. 2d 909 (1953), this Court described the common law rule as a "harsh rule," and held that an illegitimate child, because of this statute, could inherit not only *from* his mother but also *through* his mother.

Between 1929 and 1979, however, the law in Alabama recognized only the following two methods by which an illegitimate child could be legitimated in order to inherit from its father through intestate succession: 1) by marriage of the parents, accompanied by the father's recognition of the child; or 2) by a written declaration, attested by two witnesses, and filed with the judge of probate.[19]

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[19] It is quite possible that the 1952 custody and support agreement would have been sufficient to legitimate Stone if Stewart, the child's mother, or other parties, including the State of Alabama, had attempted to utilize this method. Code 1940, Tit. 27, § 11, in effect at the time of Stone's birth, provided specifically as follows:

> "The father of a bastard child may legitimate it, and render it capable of inheriting his estate, by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age, and the name of the mother, and that he thereby recognizes it as his child, and capable of inheriting his estate, real and personal, as if born in wedlock; the declaration being acknowledged by the maker before the judge of probate of the county of his residence, or its execution proved by the attesting witnesses, filed in the office of the judge or probate, and recorded in the minutes of his court, has the effect to legitimate such child."

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See *Moore*, 220 Ala. 47, 124 So. 80 (1929); see also Code 1923, §§ 9299, 9300, later codified at Code 1940, Tit. 27, §§ 10, 11, and Code 1975, §§ 26-11-1, 26-11-2.

Additionally, there were statutes in effect at the time of Stone's birth that provided that a father of an illegitimate child could be required to support the child, even though there had been no formal adjudication of paternity. See Code 1940, Tit. 34, §§ 89, 90. Under these provisions, a charge of nonsupport against the putative father could be sustained, even if he had not been adjudicated the father, if the putative father had publicly acknowledged or treated the child as his own in a manner to indicate his voluntary acknowledgement of parenthood. See *Law v. State*, 238 Ala. 428, 191 So. 803 (1939). These statutes evidence the policy of the law to compel the father of an illegitimate child to support that child if the father had *voluntarily acknowledged his parenthood*, as Hank Williams did here.[20]

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Normally, any agreement would have been filed before the father's death, but the statute was not so limited.

[20] We recognize that there is no Alabama case law on the issue of whether a purely contractual obligation to pay child support survives the death of the obligor; however, some jurisdictions, even at the time of Stone's birth, had held that death did not terminate a voluntary contractual obligation made by the decedent to pay child support, such as that made in the present case. We need not decide in this case whether a *court-ordered* obligation to pay child support survives the death of the obligor; however, we do hold that an agreement to pay child support, such as that involved in this case, that is purely

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After the United States Supreme Court decided the cases of *Trimble v. Gordon*, 430 U.S. 762 (1977), and *Lalli v. Lalli*, 439 U.S. 259 (1978),[21] Alabama's law concerning the right of an illegitimate child to inherit from its father changed dramatically. In *Trimble*, 430 U.S. 762 (1977), the Court found an Illinois statute, much like Alabama's Code 1975, §§ 26-11-1 and 26-11-2, which set forth the

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contractual and voluntarily entered without judicial compulsion, does not lose its enforceability at the death of the obligor, unless otherwise expressed.

We note, in particular, the following cases:

1) *In re Cirillo's Estate*, 114 N.Y.S.2d 799 (Queens Sur. 1952), in which the court, settling an account against the estate of the deceased, held that while generally a child support obligation ends with the death of the parent, the deceased's agreement to make support payments as long as his responsibility for the support of the illegitimate child existed under the law indicated that he intended to bind his estate beyond his death; and

2) *Stumpf's Appeal*, 116 Pa. 33, 8 A. 866 (1887), in which the court reversed a judgment disallowing the plaintiff's claim against the putative father's estate and held that there was nothing in the support agreement to indicate an intention by the obligor to limit his obligation to support his illegitimate child to his lifetime only and that the evidence showed that the purpose of the agreement was to save the mother from the expenses of rearing the child, and thus, the contract was continuing and binding on the decedent's estate.

See also, Annot., *Validity and Construction of Putative Father's Promise to Support or Provide for Illegitimate Child*, 20 A.L.R. 3d 500, 540 (1968).

[21] Of course, the rights of illegitimates to equal protection had been decided in *Levy v. Louisiana* in 1968.

two methods of legitimation discussed above, to be unconstitutional under an equal protection challenge. The Court stated the following:

> " 'The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual – as well as an unjust – way of deterring the parent.' "

Trimble, 430 U.S. at 769 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)). In *Lalli*, 439 U.S. 259 (1978), the United States Supreme Court upheld, as constitutional, a similar New York statute because it provided that an illegitimate child could inherit from its father if there had been a judicial determination of paternity before the father's death.

In *Lalli*, Mr. Justice Powell, while recognizing, however, the importance of the competing state interest in the just and orderly administration of decedents' estates, stated as follows:

> "The primary state goal underlying the challenged aspects of § 4-1.2 is to provide for the just and orderly disposition of property at death. We long have recognized that this is an area with which the States have an interest of considerable magnitude. *Trimble*, [430 U.S. 762 (1977)] at 771; *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. at 170; *Labine v. Vincent*, 401 U.S. at

538; see also *Lyeth v. Joey*, 305 U.S. 188, 193 (1938); *Merger v. Grima*, 8 How. 490, 493 (1850).

> "This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York Surrogate's Court has observed: '[T]he birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove.' *In re Ortiz*, 60 Misc.2d 756, 761, 303 N.Y.S.2d 806, 812 (1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. 'The putative father often goes his way unconscious of the birth of a child. *Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother*. Indeed the mother may not know *who* is responsible for her pregnancy.' Ibid. . . . ; accord, *In re Flemm*, 85 Misc.2d 855, 861, 382 N.Y.S.2d 573, 576-577 (Surr.Ct. 1975); *In re Hendrix*, 68 Misc.2d, at 443, 326 N.Y.S.2d, at 650; cf. *Trimble*, supra, at 770, 772."

439 U.S. at 268-69 ("who" emphasized in original; other emphasis added).

Further, Mr. Justice Powell quoted extensively from *In re Flemm*, 86 Misc.2d 855, 381 N.Y.S.2d 573 (N.Y. Sur. 1975), as follows:

> " 'An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent . . . . And, in probating the will of his parent (though not named a beneficiary) or in

> probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of great concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogates' Courts since title to real property passes under such decree. Our procedural statutes and Due Process Clause mandate notice and opportunity to be heard to all necessary parties. *Given the right to intestate succession, all illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates.* The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many – some members suggested a majority – of estates.' 85 Misc. 2d, at 859, 381 N.Y.S.2d, at 575-576."

439 U.S. at 270 (emphasis added).

Recognizing a different view in *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983), the United States Supreme Court, in holding a Tennessee statute of limitations involving illegitimate children unconstitutional, stated:

> *"In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny.* Although

we have held that classifications based on illegitimacy are not 'suspect,' or subject to 'our most exacting scrutiny,' *Trimble v. Gordon*, [430 U.S. 762 (1977)], at 767; *Mathews v. Lucas*, 427 U.S., at 506, the scrutiny applied to them 'is not a toothless one. . . . ' Id., at 510. In *United States v. Clark*, [445 U.S. 23 (1980)], we stated that 'a classification based on illegitimacy is unconstitutional unless it bears "an evident and substantial relation to the particular . . . interest [the] statute is designed to serve." ' 445 U.S., at 27. See also *Lalli v. Lalli*, [439 U.S. 259 (1978)], at 265 (plurality opinion) ('classifications based on illegitimacy . . . are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests'). We applied a similar standard of review to a classification based on illegitimacy last Term in *Mills v. Habluetzel*, 456 U.S. 91 (1982). We stated that restrictions on support suits by illegitimate children 'will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest.' Id., at 99.

"Our decisions in *Gomez* [*v. Perez*, 409 U.S. 535 (1973)] and *Mills* are particularly relevant to a determination of the validity of the limitations period at issue in this case. In *Gomez* we considered 'whether the laws of Texas may constitutionally grant legitimate children a judicially enforceable right to support from their natural fathers and at the same time deny that right to illegitimate children.' 409 U.S., at 535. We stated that 'a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally,' id., at 538, and held that 'once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a

> child simply because its natural father has not married its mother.' Ibid. *The Court acknowledged the 'lurking problems with respect to proof of paternity,' ibid., and suggested that they could not 'be lightly brushed aside.' Ibid. But those problems could not be used to form 'an impenetrable barrier that works to shield otherwise invidious discrimination.'* Ibid." (Emphasis added.)

462 U.S. at 8-9.

Consequently, in 1979, this Court, in the case of *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), in order to avoid finding Alabama's statutory scheme for intestate succession unconstitutional, construed it to include a third method of legitimation, i.e., a judicial determination of paternity made within two years of birth and during the father's lifetime. The *Everage* Court gleaned this third method from the child support statutes found at Code 1975, § 26-12-1 et seq. In 1982, the Alabama legislature superseded *Everage* and wrote this procedure into the Probate Code itself, in § 43-8-48, which provides that an illegitimate child is considered to be the child of the father if the parents marry or if paternity is established by an adjudication before the death of the father or *thereafter by clear and convincing proof*.[22] Then, in addition, in 1984, the

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[22] While not at issue in the present case, it is worth noting that the comments to this section expressly state that there is no time limitation in which to bring an action for paternity under this section because the drafters had serious reservations about the constitutionality of the former two-year limitations period adopted in *Everage*, and rightfully so. See *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985) (which recognized that the two-year limitations period in *Everage* was unconstitutional).

legislature repealed Code 1975, § 26-12-1 et seq., and replaced those sections with the Alabama Uniform Parentage Act, found at Code 1975, § 26-17-1 et seq. Like the child support statutes it replaced, the AUPA sets forth a mechanism whereby a judicial determination of paternity can be made. Therefore, there are presently two statutory schemes for judicial determination of paternity, one in the Probate Code and one in the AUPA.

Under the law as it exists today, there can be no question that where, as in this case, paternity has been established by clear and convincing evidence,[23] the law

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[23] For the purpose of clarity, we briefly recap the evidence that compelled the trial court's finding of paternity that is now undisputed in this case: 1) the 1952 custody and support agreement, that was drafted by Williams's attorney, refers to Hank Williams throughout as the "father" of the child; 2) the 1952 agreement, itself, requires a relinquishment by the mother of virtually all rights in the child to Hank Williams; 3) the 1952 agreement provided that the mother be given a one-way plane ticket to California, and that the child live with Lillian Stone, Williams's mother, for two years, during which time he would fully support the child; 4) the 1952 agreement provided that at the age of 3, the child "was to live with him [Hank Williams] continuously and be wholly and completely supported for by him, and cared for by him" (it is interesting to note that at the time this agreement was drafted, Williams, Jr., did not live with his father, but rather, lived in Tennessee with his mother, Audrey Williams; it appears, then, that Hank Williams attempted to provide the opportunity for closer parent-child relationship with Stone, who was to live with him, than that being enjoyed by his other child); 5) Lillian Stone, Irene Smith, and other family members acknowledged and publicly held the child out as the daughter of Hank Williams; and 6) the records of the Montgomery County Department of Public

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recognizes the right of the child to inherit through intestate succession. In brief response to the argument that Stone is barred from establishing her rights in the estate by operation of the doctrines of res judicata and collateral estoppel, we note the following. First, with regard to the issue of Stone's paternity, it is clear from the record that this issue was not adjudicated in the 1967 and 1968 proceedings. The court stated that it "[did] not believe that it [was] necessary to make this . . . determination." Furthermore, the issue of Stone's paternity was not appealed to this Court, and therefore, no arguments concerning the issue of her paternity are material. Finally, as for the issues regarding Stone's rights that were adjudicated in the 1967 and 1968 proceedings, the fact that those determinations were influenced by legal fraud on the court renders the doctrines of res judicata and collateral estoppel inapplicable, especially in this case, which involves the illegitimate child's right to share in the proceeds of copyright renewals that admittedly would have been payable to her as an illegitimate had her paternity not been concealed. See Code 1975, § 43-8-48; and *Cotton v. Terry*, 495 So. 2d 1077 (Ala. 1986). We recognize that the law at the time of her father's death had not yet recognized the third method of legitimation for the purpose of

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Welfare repeatedly document that Stone's natural father was Hank Williams. Therefore, unlike many cases in which the alleged father denies paternity and wishes to have nothing to do with the child, this is a case in which the father not only wished to accept responsibility for the child, but convinced the mother to give the child up, so that it might live with him and be reared by him.

intestate succession, i.e., a judicial determination of paternity; however, we also recognize that the law as it existed at that time has since been found to be unconstitutional by the United States Supreme Court in *Trimble v. Gordon*, 430 U.S. 762 (1977), and by this Court in *Everage v. Gibson*, 372 So.2d 829 (Ala. 1979).

In an action, such as the present one, that is not time-barred and is properly before this Court, we are bound to apply a constitutional law as it exists at the time the appeal is heard. This situation has been addressed by this Court and the Court of Civil Appeals in the cases of *Cotton v. Terry*, 495 So. 2d 1077 (Ala. 1986); *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985); and *Free v. Free*, 507 So. 2d 930 (Ala.Civ. App. 1986).

In *Cotton*, 495 So. 2d 1077 (Ala. 1986), an illegitimate child brought an action to establish paternity under Code 1975, § 43-8-48(2)(b), 11 years after the death of the alleged father. In construing § 43-8-48(2)(b), this Court held:

> "It may be seen from the plain language of the statute that paternity of an illegitimate child may be established *after the death of the father* through an adjudication supported by clear and convincing evidence. *When so established, such a child may inherit from the father through intestate succession.*" (Second emphasis added.)

Cotton, 495 So. 2d at 1079. In *Cotton*, as in the present case, there was clear evidence that the alleged father recognized the child as his and held himself out as the child's father. Yet, in *Cotton*, as in the present case, the law at the time of the alleged father's death would not have recognized the child as an heir. Even so, this Court

did not apply an unconstitutional law to the parties, but, rather, applied the law as it existed at the time of the appeal. Also, in *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985), an illegitimate child brought a paternity action before the death of the father, but after the expiration of the two-year limitations period that had been adopted in *Everage*, 372 So. 2d 829 (Ala. 1979). However, this Court refused to apply the two-year limitations period because it had since been found to be unconstitutional. Instead, it applied the law as it existed at the time of the appeal, and found the action not time-barred. Again, in *Free v. Free*, 507 So. 2d 930 (Ala.Civ. App. 1986), an illegitimate child brought an action under § 43-8-48(2)(b), not only after the death of the father, but also 20 years after the child had reached the age of majority. Despite the arguments by the legitimate heirs, the Court of Civil Appeals refused to apply the law in effect at the time of the death of the father or at the time of the birth of the child because that law had since been found unconstitutional.[24]

To the extent that there remains a question of the effect of a subsequent adoption on the right to establish paternity, we address that issue briefly. Code 1975, § 43-8-48(1), part of the Probate Code, states:

> "An adopted person is the child of an adopting parent and not of the natural parents . . . ."

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[24] While the paternity action is not an issue in the present case, it is interesting to note that Stone brought this action to set aside the former judgments and to declare her rights in her natural father's estate within 11 years after reaching the age of majority, which compares favorably with the delay in *Cotton*, 495 So. 2d 1077 (Ala. 1986), and *Free*, 507 So. 2d 930 (Ala. Civ. App. 1986).

In addition, Code 1975, § 26-17-6(e), part of the Alabama Uniform Parentage Act, provides:

> "If the child has been adopted, an action [to establish paternity under this section] may not be brought."

The trial court in the 1968 proceedings was erroneously of the opinion that the fact that Stone had twice been adopted acted as a bar to her recovery under the predecessors to these statutes. The crucial fact that the trial court failed to recognize in this case was that Stone had not been adopted at the time of her natural father's death. Therefore, any right that she had to inherit from his estate would have vested *at the time of his death* and would not have been affected by her subsequent adoption some two years later.

We do not believe that, in drafting these statutes, the legislature intended to cut off the right of an "after-adopted" child to inherit from its natural parent's estate.[25] Construing these statutes liberally, in order to further the trend of ameliorating the "harsh rule" of the common law, which had been overturned in 1968 by the United States Supreme Court, and which had been criticized by this Court and by the trial court in 1968, we believe that these statutes are to be read to protect, rather than cut off, an "after-adopted" child's right to inherit

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[25] In fact, in 1954, at the time of Stone's adoption, Alabama's law provided specifically that "[n]othing in this chapter dealing with adoption shall be construed as debarring a legally adopted child from inheriting property from *its natural parent or other kin*." Code 1940, Tit. 27, § 5. (Emphasis added.)

from its natural parents. We hold, therefore, that because Stone had not been adopted at the time of her natural father's death, her rights in his estate had already vested, and, therefore, these statutes do not apply.[26]

Relief Granted

We have noted throughout this opinion the unique character of this case. In fashioning an appropriate remedy, we again take these peculiar circumstances into consideration.

This Court is ever mindful of the policy concerns surrounding the finality of judgments. At the same time, we cannot ignore the pleas for relief of an innocent party who has labored under judgments procured by legal fraud and suppression, and based upon a completely erroneous view of the applicable law, at a time when she was not only a minor but had no one except a guardian ad litem fighting for her rights, and he was effectively foreclosed from establishing them.

We further recognize that when an illegitimate child and a decedent's estate are involved, as is the case here, the law must protect two additional state interests – the right of the illegitimate child to inherit on a par with any legitimate children, and the important state interest in the just and orderly disposition of the decedent's estate.

We also recognize that

> " 'where the rights and obligations of the parties are necessarily blended in the judgment, and are

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[26] It should be apparent that the time lapse approved in this case may not be approved in other factual settings.

> thus dependent one upon the other, though they be not strictly joint, the appellate court will render such judgment as will permit and require the entire controversy to be settled in one proceeding, in which the rights and liabilities of all parties may be considered and consistently determined.' "

City of Tuscaloosa v. Fair, 232 Ala. 129, 136-37, 167 So. 276, 282 (1936), overruled in part on other grounds by *Jacks v. City of Birmingham*, 268 Ala. 138, 105 So.2d 121 (1958) (quoting *North Alabama Traction Co. v. Hays*, 184 Ala. 592, 596 64 So. 39, 40 (1913). In view of all of the evidence in this case relating to concealment by the attorney and the administratrix of the estate of Stone's claims to the estate and of facts material to those claims, in addition to the fact that the state agencies involved, as well as the court itself, failed to protect her rights, we cannot but conclude that equity and justice require that the 1967 and 1968 decrees rendered in this matter be set aside, in part. Accordingly, in order to balance all of the equities involved in this case, we hereby reverse the summary judgment on Stone's third-party claim in which she asked that the estate be reopened, and we order that the 1967 and 1968 judgments rendered in this matter be set aside, in part, and that Stone is entitled to receive her proportionate share of any proceeds of the estate of her natural father, Hank Williams, including any income or interest, and of any copyright royalties, but prospectively only, from the date that she gave notice of her claim, August 5, 1985. The trial court's judgment which, insofar as it denied her request for punitive damages against the third-party defendants, is affirmed.

While we find that the third-party defendants' sureties, Gulf American and American States, are not liable on Stone's fraud claim, their contractual liability arising out of the surety bond issued for this estate is a matter that remains to be determined by the trial court on remand.

The judgment of the trial court, insofar as it denied Stone's first claim for relief, is reversed, and this cause remanded for a full hearing and settlement, in a manner consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Hornsby, C.J., and Jones, Adams, and Steagall, JJ., concur.

Almon and Shores, JJ., dissent.

Houston and Kennedy, JJ., recused.

Catherine Yvonne Stone v. Gulf American Fire and Casualty Co., et al.

SHORES, JUSTICE (dissenting).

While I share my brothers' sympathy for the appellant, I cannot overlook the fact that every rule of law extant at every critical time in her life is against her position. Illegitimates could not inherit from their fathers at the time her father died (1953). They could not inherit at the time his estate was litigated in 1967 and 1968 when the Circuit Court of Montgomery County entered its final judgments to that effect. No appeal was taken from those final judgments.

The majority suggests that this Court might have changed the law had the guardian ad litem appealed the

1968 judgment. That assumption is speculation at best, but to give the appellant the benefit of that guess all of these years later is unprecedented.

The majority permits the appellant to challenge final judgments after approximately 17 years and more than 11 years after she reached majority in 1974, and would permit her to reopen the estate of her father, dead now for more than 36 years. All of this is permitted more than a decade and a half after a guardian ad litem appointed to represent her interests apparently concluded that he had discharged the duties of his office.

When are judgments final? The majority does not say. It attempts to temper its assault on the finality of these judgments by permitting the appellant to share in only a part of the decedent's estate: royalties paid since August 5, 1985, forward. Apparently, then, even the majority is unprepared to give the appellant full status as an heir to Hank Williams's estate. Apparently, she takes no interest in any real estate he may have had. She is allowed to participate in royalties payable only after August 5, 1985. Presumably, had Hank Williams's estate consisted of liquidated assets only, she could not have prevailed. I have never before heard of one's legal status as an heir turning on the nature of the assets of the estate. Not surprisingly, the majority cites no authority for its holding.

Because I feel bound to apply the law to these facts, sad though they are, I am compelled to dissent.

Almon, J., concurs.

APPENDIX I-2

Stone v. Gulf American Fire & Cas. Co., et al.

On Application for Rehearing

(Released Nov. 9, 1989)

MADDOX, JUSTICE.

Both Irene Smith and Jones, Murray and Stewart, P.C., have asked this Court to clarify its original opinion and to state that the summary judgments granted to them insofar as they denied Stone's request for damages against them are affirmed. Stone has again requested (1) that this Court reverse the trial court's summary judgment on her fraud claims against third-party defendants Smith and Jones, Murray and Stewart, and (2) that this Court modify its opinion to allow her to share in the estate of Hank Williams, Sr., from the date of his death in 1953, rather than from the date on which she made a demand on Hank Williams, Jr., in 1985.

In a brief styled "Petition of Randall Hank Williams for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and for Stay of Issuance of Certificate of Judgment Pending Further Proceedings," Williams, Jr., asks this Court to vacate and modify its original opinion on the ground that he was not a party to the appeal, and, therefore, that his due process rights were violated. Williams, Jr., argues that because Stone appealed only from the summary judgment granted on her third-party claim, she is barred by the doctrine of *res judicata*, because she did not appeal the summary judgment granted to him on his claim that she was not an

"heir." In short, Williams, Jr., claims that even though Stone has shown that she is the natural child of Hank Williams, Sr., and even if that determination in her favor was not appealed by him, she is now barred from inheriting because she did not appeal the adverse determination by the trial court that she was not an "heir," even though she has been judicially determined to be a natural child.

As set forth in the our [sic] original opinion, Williams, Jr., initiated this action by filing a declaratory judgment action seeking a declaration that Stone had no entitlement to Hank Williams's estate. Stone filed a counterclaim against Williams, Jr., and alleged that she was the natural daughter of Williams, Sr. Williams, Jr., joined issue on that claim.

Stone later filed a third-party complaint against Smith; Jones, Murray and Stewart, P.C.; and several fictitiously named parties, asking that the estate be reopened; she also asked for compensatory and punitive damages against third-party defendants Smith and Jones, Murray and Stewart, P.C. Gulf American Fire & Casualty Company and American States Insurance Company were also named as third-party defendants. The trial court entered a "Partial Summary Judgment" for Williams, Jr., on his complaint and entered a "Partial Summary Judgment" against Stone on her counterclaim and on her third-party complaint, finding "that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. . . . [and that] [t]his issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even

though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings."

As the trial court stated in its order on October 26, 1987, Williams, Jr., throughout the proceedings, subsequent to the time when the court entered its "Partial Summary Judgment" on July 14, 1987, objected to the trial court's proceeding forward to determine Stone's paternity, and excepted to the Court's interpretation of the pleadings.[1]

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[1] For a better understanding of the legal effect of the trial court's grant of "Partial Summary Judgment" and the continuance of the case for a determination of Stone's paternity, over the objection of Williams, Jr., we set out portions of the trial court's orders:

> "The instant suit was commenced by the Plaintiffs on September 10, 1985 by Complaint for Declaratory Judgment and Injunctive Relief. The Complaint was amended twice with the last amendment being filed on November 14, 1985. Stone filed her Counterclaim for Establishment of Paternity, Declaration of Rights and Imposition of Constructive or Resulting Trust on October 14, 1986. Her third party complaint was also filed on that date.
>
> "The issues raised by the motions for summary judgment presently before this Court are as follows:
>
> "Whether, because of her illegitimate status and her status as an adopted child, Stone is barred by applicable state law from now attempting to establish that she is an heir of the Williams, Sr. estate.
>
> "Whether Stone has ever been adjudicated to be a child of Hank Williams, Sr.

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"Whether, based upon the facts not now in dispute, the third party complaint states a cause of action upon which relief may be granted.

"* * * *

"Turning to the issue of the alleged status of Stone as the child (as opposed to legal heir) of Williams, Sr., it is clear from the record that there was never a judicial determination relative to the biological relationship between Stone and Williams, Sr. As the Court noted in 1967, it was not necessary for the Court to make such a determination in reaching its decision at that time as it was irrelevant. Thus, res judicata and collateral estoppel do not affect that question and it remains an issue of disputed fact between the parties.

"As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged

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fraudulent concealment purportedly occurred, a full disclosure to the Court or to interested third parties would have been superfluous. Therefore, the Court is of the opinion that the Third Party Complaint does not state a cause of action for which recovery can be had.

"It appears from the record and from a complete review of the proceedings in this case that the law requires that the Court enter a Partial Summary Judgment in this cause. The Court finds that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. This issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings.

"Based on the foregoing it is therefore ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

"The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the original Complaint is GRANTED as to all issues with the exception of whether or not the Defendant is the biological child of Williams, Sr.

"The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the Counterclaim is granted as to all issues.

"The Motions for Summary Judgment filed by the Plaintiffs and the Third Party Defendants as they relate to the Third Party Complaint are GRANTED on all issues.

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"Further proceedings in this cause are hereby set on the 25th day of August, 1987 at 10:00 a.m.

"DONE THIS THE 14TH DAY OF JULY, 1987.
"s/H. MARK KENNEDY
"CIRCUIT JUDGE"

On October 26, 1987, the trial judge entered a final judgment in the case, which held inter alia:

"Plaintiffs throughout these proceedings, subsequent to this Court's Order on Motions for Summary Judgment, have objected to this Court's proceeding forward and have excepted to the Court's interpretation of the state of the pleadings. Regardless of whether the question is framed as, is the Defendant the natural daughter of Williams, Sr., or is Williams, Jr. the only natural child, the court reiterates that the issue that remains before the court is the biological status of Defendant Stone. The court is of the opinion that that issue was raised by the Plaintiffs in the original Complaint, was joined by the Defendant, and now is a legitimate, justiciable issue.

"In lieu of making additional findings of fact, the Court adopts the findings as stated in the previous Orders of this Court. Based upon those findings and the additional evidence as submitted at the hearing of September 2, 1987, the court is of the opinion that it continues to have jurisdiction over the parties and of the subject matter and does hereby enter the Final Order.

"The Court upon consideration of the evidence does hereby find that Hank Williams, Jr. is not in fact the only natural child of Hank Williams, Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr."

Stone admittedly did not appeal the entry of the "Partial Summary Judgment"[2] entered in favor of Williams, Jr., on his complaint, and on Stone's counterclaim on July 14, 1987, likewise, Williams, Jr., did not appeal the adverse ruling that Stone was the natural child of Hank Williams, Sr., that was entered on October 26, 1987. Naturally, Stone did not appeal from the October 26, 1987, determination that she was the natural child of Williams, Sr., because it was favorable to her.

It is clear that the doctrine of *res judicata* does not apply in this situation, because that doctrine prohibits the *relitigation* of all matters that were or could have been litigated in a *prior* action. *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n*, 401 So. 2d 764, 768 (Ala. 1981). Here, the complaint of Williams, Jr., and Stone's counterclaim and third-party complaint were litigated together.

As the trial court found, the main thrust of Stone's third-party claim involved "an argued duty to disclose and the willful or fraudulent failure to do so." This Court, in its original opinion, found that there was a duty, that there was a breach of that duty, and that Stone was entitled to have the estate reopened, but was not entitled to any damages against the third-party defendants. Williams, Jr., in his petition before us, claims that Stone's third-party complaint was only for *indemnification* and that "Stone's request in her third-party complaint to reopen the estate was simply meaningless surplusage."

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[2] In his petition before us, Williams, Jr., notes that the "Partial Summary Judgment" was "interlocutory and not subject to immediate appeal." See Rule 54(b), Ala. R. Civ. P.

We cannot agree. On original deliverance, we considered whether summary judgment was appropriate on this third-party complaint, which contained claims that were both in personam and in rem. Although we did not elaborate on the issue, we necessarily determined that Stone's request to have the estate reopened was an action in rem.[3] Additionally, this Court, on another appeal in this case, treated the original declaratory judgment action filed by Williams, Jr., as one filed pursuant to the provisions of Ala. Code 1975, § 6-6-225. In *Ex parte Stone*, 502 So. 2d 683 (Ala. 1986), this Court stated the following concerning the nature of the underlying declaratory judgment action:

> "Further support for the trial court's refusal to dismiss the Williams Group's complaint can be found in *Code of Alabama, 1975*, § 6-6-220, *et seq.*, the Declaratory Judgment Act. Specifically, § 6-6-225 provides:
>
> > " 'Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust or of the

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[3] In 1A C.J.S. *Actions* § 4 (1985), pp. 309-10, it is said:

> "As its name implies, an action in rem is an action or proceeding against a 'thing' or property, instead of a person; a proceeding to determine the state or condition of the thing itself; a judicial proceeding against the thing itself, which terminating in a valid judgment binds all the world. It has been said, however, that an action or proceeding in rem is difficult to define with accurate completeness, its exact nature being best understood by reference to its essential features."

> estate of a decedent, infant, incompetent or insolvent may have a declaration of rights or legal relations in respect thereto:
>
> > " '(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other;
> >
> > " '(2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
> >
> > " '(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.'
>
> "The instant dispute plainly falls within the scope of this statute, and the declaratory judgment action filed by the Williams Group is thus a viable means of settling this dispute."

502 So. 2d at 686.

Stone's claim in her third-party complaint, in which she seeks to reopen the estate, is not essentially different from the prayer of Williams, Jr., for relief in his declaratory judgment action, wherein he specifically asked:

> "That in the event this Court *alters, modifies or otherwise changes the prior Orders and Judgments* in Civil Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam Hank Williams and the copyright and renewal copyright renewal copyright [sic] interests of the musical compositions of Hiriam 'Hank' Williams."

To apply the principles of *res judicata* or of collateral estoppel in this case would be most inequitable, and

would violate the spirit of both Rule 1, A.R.Civ.P. and Rule 1, A.R.App.P., and would elevate form over substance. It is clear that both the complaint of Williams, Jr., and Stone's third-party complaint asked for a determination of Stone's right to share in the estate. As we indicated in our original opinion, the claims of the various parties in this case are so intertwined and the factual situation is so unique that notions of fairness require that the entire controversy be settled in one proceeding.[4] See *City of Tuscaloosa v. Fair*, 232 Ala. 129, 167 So. 276 (1936), overruled in part on other grounds by *Jacks v. City of Birmingham*, 268 Ala. 138, 105 So. 2d 121 (1958). Stone did indeed appeal a judgment that held that she was not entitled to have the estate reopened. She convinced this Court that the record in this case showed that she was, in fact, entitled to have the estate reopened. To say that she was barred from raising her claims on that appeal because she did not also appeal a simultaneous judgment with the same holding would be unfair under *City of Tuscaloosa v. Fair* and the spirit of the Alabama Rules of Civil Procedure.[5]

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[4] It is perfectly clear that the judgment of the trial court on the declaratory judgment action and on the third-party complaint was premised upon an erroneous determination by the trial court that even if Stone was a natural child of Williams, Sr., she was not an "heir."

[5] The July 14, 1987, judgment of the trial court adjudicated all claims of the parties except Stone's claim that she was a natural child of Williams, Sr. Williams, Jr., strongly resisted the trial court's jurisdiction to make the subsequent finding. Also, it should be remembered that the trial court granted the third parties' motion for a *summary judgment*, and although the

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Even though we hold that the third-party action seeking to reopen the estate was in rem and that Williams, Jr., essentially asked for the same relief in the original declaratory judgment action that Stone requested in her third-party complaint, we, nevertheless, have carefully considered the argument of Williams, Jr., that, because Stone did not appeal the summary judgment entered in favor of him on his declaratory judgment complaint, this Court should not have determined, on this appeal, whether Stone was entitled to have the estate reopened and to share in the estate because he was not a party to the appeal.

This Court, on original submission, carefully considered whether it should allow this estate to be reopened. The dissenting Justices were of the opinion that we should not permit it to be reopened. On original deliverance, we noted "throughout [the] opinion the unique character of this case," and that "[i]n fashioning an appropriate remedy, we [took] these peculiar circumstances into consideration."

Although the judgments appealed from were summary judgments, there was voluminous evidence presented, much of which we took into consideration in fashioning

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judgment was not specifically made final and appealable pursuant to the provisions of Rule 54(b), Ala.R.Civ.P. (it was denominated a "Partial Summary Judgment" by the trial court), it would not be in keeping with the spirit of the Alabama Rules of Civil Procedure to hold that Stone would now be precluded from sharing in the estate, especially when Williams, Jr., specifically asked that Stone's claim be adjudicated pursuant to Ala. Code 1975, § 6-6-225.

our order on original deliverance. The basic facts upon which our legal determination was made were not disputed; therefore, we were presented with questions of law, considering those admitted facts. As the original opinion shows, this Court carefully considered the rights of individuals, including petitioner Williams, Jr., who had relied upon the prior decrees that this Court held were due to be set aside, and our judgment was not unanimous; there were dissenting views.

On application for rehearing, we have carefully considered Stone's argument that we should allow the estate to be reopened from the beginning, and we have considered very closely the argument of Williams, Jr., that we should not let Stone share at all, even though she has been judicially declared to be the natural daughter of Williams, Sr. We believe we reached a just and equitable result on original deliverance, and we are of the opinion that the petition of Williams, Jr., for leave to appear for the purpose of seeking to vacate and modify this Court's July 5, 1989, opinion is due to be denied. In reaching this conclusion, we apply the statutory principle in Code, 1975 § 12-22-70, which is merely declaratory of an appellate court's power, that "[t]he appellate court may, upon the reversal of any judgment or decree, remand the same for further proceedings or enter such judgment or decree as the court below should have entered or rendered, when the record enables it to do so." The record in this case allows us to do that, because the facts of the case have been fully developed in this record, and the evidence is either undisputed or without material conflict. In such a case, the general rule particularly applicable as

stated in 5B C.J.S. Appeal and Error § 1925 (1958), pages 425-27:

> "The general rule that the appellate court may, on reversal, render or direct final judgment is particularly applicable where the facts of the case have been fully developed on the trial, and there is nothing on which the party against whom reversal was made could strengthen his case or ground further proceedings, and it appears from the record that the evidence on another trial would be substantially unchanged."

Because we are of the opinion that Stone is not precluded by *res judicata* or collateral estoppel from having the estate reopened and because we believe that, based on the facts of this case, which were fully developed in this record and on the further fact that the position advanced by Williams, Jr., that Stone was not an "heir" was adequately presented by other parties on this appeal, and based on this Court's independent consideration of his position in view of the in rem nature of the proceeding, we cannot see how Williams, Jr., could strengthen his position on the law of this case. In fact, since original deliverance, we have located another case which appears to support the result we reached. The Supreme Court of Mississippi recently stated in *Collier v. Shell Oil Co.*, 534 *So.*, 2d 1015, 1017 (Miss. 1988): "One who has acquired title by operation of law under prior interpretation of the law regulating descent and distribution must yield to a subsequent change of interpretation." See also *Reed v. Campbell*, 476 U.S. 852 (1986) (*Trimble v. Gordon*, 430 U.S. 762 (1978), can be applied retroactively).

Based on the foregoing, we deny the petition of Randall Hank Williams, Jr., and we overrule the application

for rehearing filed by Stone, and we affirm the entries of summary judgment for Smith and Jones, Murray, and Stewart, P.C., on Stone's claim for fraud.

PETITION OF RANDALL HANK WILLIAMS, JR., DENIED; APPLICATION FOR REHEARING BY STONE OVERRULED; OPINION EXTENDED; AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Jones, Adams, and Steagall, JJ., concur. Almon and Shores, JJ., dissent.

Hornsby, C.J., and Houston, and Kennedy, JJ., recused.

Catherine Yvonne Stone v. Gulf American Fire & Casualty Co., et al.

SHORES, JUSTICE (dissenting).

The majority excuses its disregard of the law by calling this a unique case, but it cannot escape the fact that Williams, Jr., won the controversy between him and Stone in the court below and that Stone did not appeal that judgment. That judgment became final, and it decided the issue of whether Stone could share in the estate of Hank Williams, Sr. As the *Restatement (Second) of Judgments* § 33 (1982) states:

> "A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action."

Stone appealed a judgment entered in her impleader action against certain other third parties. Williams, Jr.,

was not before this Court. Yet this Court has decided that Williams, Jr., now loses the case between him and Stone and by doing so refuses to follow all of the applicable substantive law pertinent to the issues and now disregards the procedural rules as well. If this case were not so unique, the issues between Williams, Jr., and Stone that were decided by a court of general jurisdiction in favor of Williams, Jr., would be settled forever because they are *res judicata*. As Professor Moore has written:

> "If an appeal is taken from only part of the judgment, the remaining part is res judicata, and the vacation of the portion appealed from and remand of the case for further proceedings does not revive the trial court jurisdiction of the unappealed portion of the judgment."

1B J. Moore, *Moore's Federal Practice* ¶0.404 (2d ed. 1988).

I think the Court's action violates the constitution of this state and the Constitution of the United States in that it directly affects property rights of Williams, Jr., that were vested, if not at the time the estate of Williams, Sr., was finally closed, then surely by the entry of final judgment in his favor in his declaratory judgment action, which this Court held was the proper way to finally determine whether Stone had an interest in the estate. As Professor Moore has said in commenting upon the failure of a court to give *res judicata* effect to binding prior orders:

> "The due process clause of the Fourteenth Amendment should preclude a state from subsequently restricting or refusing effect to one of its judgments as res judicata beyond a certain point. The reasons for this conclusion are: judicial rights were vested by the judgment; they

> may be divested by the usual judicial remedies of direct attack, and remedies to enjoin or otherwise obtain relief from the judgment; just as a party may not arbitrarily be bound by a judgment, so he may not arbitrarily be deprived of his rights under a valid judgment. And a state constitutional due process provision would similarly act as a check upon state power to deprive a party unjustly of vested rights in a judgment rendered by the state court."

1B J. Moore, *Moore's Federal Practice* ¶0.406 (2d ed 1988).

It has often been said that hard cases make bad law. This case demonstrates that unique facts can result in a disregard for all law.

Almon, J., concurs.

APPENDIX J-1

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as TRUSTEES in LIQUIDATION for STOCKHOLDERS of FRED ROSE MUSIC, INC., both TENNESSEE CORPORATIONS,	*	
PLAINTIFFS,	*	
vs.	*	CIVIL ACTION NO. 85-1316-K
CATHERINE YVONNE STONE,	*	
DEFENDANT.	*	
CATHERINE YVONNE STONE,	*	
COUNTER-CLAIMANT,	*	
vs.	*	
RANDALL HANK WILLIAMS,	*	
COUNTER-DEFENDANT.	*	
CATHERINE YVONNE STONE,	*	
THIRD PARTY PLAINTIFF,	*	
vs.	*	
GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH; THE ESTATE OF ROBERT B. STEWART; et al.	*	
THIRD PARTY DEFENDANTS.	*	

FINAL ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This Cause comes before this Court upon an Action for Declaratory Judgment filed by Randall Hank Williams (hereinafter referred to as Williams, Jr.), Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc. against Catherine Yvonne Stone (hereinafter referred to as Stone), as Defendant.

The Complaint as amended seeks to have the Court declare that Stone has no entitlement to any proceeds or royalties from the Estate of Hiriam "Hank" Williams (hereinafter referred to as Williams, Sr.), that, as an adopted child she is barred from attempting to establish that she is a child of Willliams, [sic] Sr. and that Williams, Jr. is the sole child of Williams Sr. and that Stone has never been adjudicated, under the laws of the State of Alabama, to be the Child of Williams, Sr. The Complaint further seeks to have the Court determine that Stone is barred from now attempting to establish that she is a child of Williams, Sr. by the applicable statute of limitations, the doctrine of laches, waiver and estoppel, and, because of this Court's previous judgments and orders. Finally, Plaintiffs pray that this Court will declare that Williams, Jr. is the sole child and sole heir of Williams, Sr., and thus is the sole person with rights in and to the Estate of Williams, Sr., including, but not limited to, rights in musical compositions, recordings, copyrights, use of the name and likeness of Williams, Sr., and all other tangible and intangible rights deriving from Williams, Sr.'s estate.

Simultaneously with the answer filed by Stone, a counterclaim was filed against Williams Jr. on October 14, 1986. In said counterclaim, Stone alleges that she is the natural daughter of Williams, Sr. and as such is entitled to one-half of the proceeds of his estate. She prays for the entry of judgment that establishes her paternity, and awards her her proportionate interest in the proceeds of the Williams, Sr. estate. She requests that a constructive or resulting trust on all monies derived by Williams, Jr. from the estate of Williams, Sr. be imposed.

Subsequent to her counterclaim, Stone filed on October 24, 1986, a third party complaint against Gulf American Fire and Casualty Company (hereinafter referred to as Gulf American), American States Insurance Company (hereinafter referred to as American States), Jones, Murray & Stewart, P.C., Irene Smith, and the Estate of Robert B. Stewart. The third party complaint alleges that there was an intentional, willful and fraudulent concealment from the Court from 1953 through 1967 of Stone's identity and claim as a natural child of Williams, Sr. It further states that there was a conspiracy to defraud the Court and Stone by purposefully concealing pertinent information and theories that would presumably have entitled Stone to a share in the proceeds of the Williams, Sr. estate. Stone files a claim for relief against the sureties for payment on the surety bond issued by Gulf American and its successor American States on the administrator's bond issued in connection with the estate of Williams, Sr. Pursuant to the third party complaint, Stone requests that the estate be reopened and all previous orders of the Court affecting her status be declared null and void, that she be

allowed to share in a proportionate interest in the Williams, Sr. estate and that she recover general and punitive damages against all third party defendants.

At the present time, four motions for summary judgment are presently pending before the Court on behalf of the following:

1. Williams, Jr., Wesley Rose and Roy Acuff,
2. Irene Smith,
3. Jones, Murray & Stewart, P.C. and
4. Gulf American and American States.

By Order of the Court, pursuant to an agreement of the parties, the Estate of Robert B. Stewart was dismissed on April 3, 1987.

The Court has reviewed the various motions submitted along with the arguments and briefs of learned counsel and is now of the opinion that the Court has jurisdiction over the parties and of the causes of action. Pursuant thereto, the Court does hereby proceed to enter this its final order on all motions for summary judgment.

For the purposes of this order, the Court makes the following findings of fact which, in its opinion, are not in dispute.

On October 15, 1952, Williams, Sr. and Bobbie W. Jett entered into a written agreement relative to the custody and support of an unborn child that was being carried by Jett. The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery County, Alabama.

The agreement stated that Bobbie W. Jett was pregnant and that Williams, Sr. may have been the father of said child. It was obviously the desire of the parties to agree to the support and custody of the child through the provisions of the agreement that they entered into. The agreement called for Williams, Sr. to provide room and board for Jett up until delivery, to provide periodic support for Jett pending the birth and to pay for all necessary expenses incurred for the actual delivery.

Jett was to be provided with a one way ticket to California by Williams, Sr. within 30 days after the birth of Jett's child and physical custody of the child would vest in Williams, Sr.'s mother, Mrs. Lillian Williams Stone. Specifically the agreement provided:

> After the birth of said child, both parties agree that it shall be placed with Mrs. W.W. Stone of Montgomery, and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. . . . Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; . . . The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting its mother.

> In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by this agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.

William, Sr. died intestate on January 1, 1953.

Lillian Williams Stone filed for letters of administration for the Williams estate in the Probate Court of Montgomery County, Alabama in January 1953. In her petition, she listed the heirs and distributees of the intestate estate as:

> Billie Jean Jones, "who states she is the widow",
> Randall Hank Williams, Jr.,
> Mrs. Irene Williams Smith, a sister
> Elonzo H. Williams, father and
> Lillian S. Stone, mother.

The Petition was prepared by Robert B. Stewart, the same attorney who had prepared the Williams, Sr./Jett agreement several months earlier.

Five days after the death of Williams, Sr., Jett gave birth to Stone who was given the name of Antha Bell Jett. By agreement, the baby was left with Mrs. Lillian Stone and Jett left the state.

On or about January 28, 1953, Lillian Stone contacted the Montgomery County Department of Pensions and Security about the possibilities of adopting the baby. In explaining how she came to have physical custody of the baby it is probable to assume as correct that she reported to them that Jett was the mother of the child and that her son, Williams, Sr. was the father.

The record of these proceedings seems to indicate that Lillian Stone, on several occasions told others that the baby had been fathered by her son.

In July of 1953 a petition for adoption was filed by Lillian Stone and her husband for the adoption of Antha Bell Jett (Stone) in the Probate Court of Montgomery County, Alabama. An interlocutory order of adoption granting temporary custody of Stone to William W. Stone and Lillian Stone was issued on September 21, 1953. The Montgomery County Department of Pensions and Security began supervision on that date and continued the same until a final decree of adoption was entered on December 23, 1954. At that time an adoptive parent/child relationship between William Wallace Stone and Lillian Williams Stone and Antha Bell Jett (Stone) was established. The child's name was changed to Catherine Yvonne Stone.

Lillian Williams Stone died on February 26, 1955. Stone's adoptive father was unwilling to continue the parent child relationship that had been established through the original adoption decree and Stone was made a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama on April 22, 1955. She was placed in the home of Mrs. Ilda Mae Cook as a foster child.

In February of 1956, Stone was transferred by the Montgomery County Department of Pensions and Security to Mobile, Alabama to the home of George Wayne and Mary Louise Deupree. Although it was initially another foster home placement, the Deupree's ultimately instituted adoption proceedings and on April 23, 1959

Stone was again adopted. Thus, a second adoptive/parent child relationship was established for Stone, this time with Mr. and Mrs. Deupree. Stone's name was then changed to Cathy Louise Deupree.

The record contains correspondence between the attorney for the estate, Robert B. Stewart, and one Harold Orenstein, legal counsel for Wesley Rose. The correspondence was transmitted in 1962 and it contains discussions concerning the status of Stone. The Orenstein letter in pertinent part reads:

> D. *CATHERINE YVONNE STONE* – From the documents which you have furnished to me, Catherine Yvonne Stone . . . was returned to the State of Alabama Welfare Department after the death of Lillian Stone, and then re-adopted by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. . . . It would appear that some token payment to the State of Alabama Welfare Department . . . on behalf of this child may or may not be indicated. There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.

In response, Stewart wrote in pertinent part:

> None of this would seem to affect the child's statutory right to copyright renewal. (Referring to the right of Stone to receive a homestead share in the Lillian Stone estate). The adoption might affect any right to which the child was entitled through the father. . . . (W)e may be

faced with a difficult problem, and certainly one we would not want to litigate.

As possible alternatives we can:

a. consider that by the adoption all rights under the renewal statute have been lost.

b. Try to explain the matter to our Welfare Department which does not want the child to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.

c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. If we use this procedure, the guardian ad litem will have to know what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.

I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with the understanding of the facts by the court.

It was not until 1967 that any Court having jurisdiction over the estate of Williams, Sr. was advised of the possibility that Williams, Sr. may have died leaving a child other than Williams, Jr. That fact surfaced in two actions then pending before the Circuit Court for Montgomery County, Alabama.

In that year, Audrey Williams, the mother of Williams, Jr. filed a petition for final settlement in the Williams, Sr. estate and a petition to vacate and for accounting and transfer in the guardianship estate of Williams, Jr. then a minor. At that time, Irene Smith was the administratrix of the Williams, Sr. estate and the Alabama guardian of Williams, Jr. in the guardianship estate. In the capacity as aforementioned, Smith filed her response to the petitions filed by Audrey Williams. It was in those answers that the question of existence of the legal rights of Stone and any other unknown heirs were first raised. In each proceeding the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interest of any minor person(s) who might have an interest in the matters involved in the proceedings.

The record reflects that Hamilton had previously served as guardian ad litem for Stone in proceedings relating to the estate of Williams Sr.'s mother, Lillian Stone, in 1963. It appears, however, that at that time Hamilton knew only that she was an adopted child of Lillian Stone. According to Hamilton, the first time that he became aware that Stone may possibly have been fathered by Williams, Sr. was after he had been appointed guardian ad litem in the proceedings initiated by Audrey Williams.

In 1967 and 1968 Stone lived in Mobile with her adoptive parents Mr. and Mrs. Deupree. The Deuprees knew of the pendency of the proceedings in Montgomery and had conversations with Hamilton concerning those proceedings. The record seems to establish that Stone's adoptive parents were not interested in pursuing the

matter on behalf of their daughter. Hamilton continued his representation and actively participated in all phases of the proceedings.

A trial was conducted on the merits before Honorable Richard P. Emmet of the Circuit Court of Montgomery County, Alabama. At trial Hamilton argued that Stone was the legitimate daughter of Williams, Sr. through the operation of law as applied to the October, 1952 agreement between Williams, Sr. and Jett. He posited that the agreement met the statutory requirements for legitimation in the State of Alabama. In the alternative, he challenged existing state law on constitutional grounds. In summary he argued:

> We conclude that the Court must determine that the child . . . is the natural child of Hank Williams; secondly, that the said child is the legitimate daughter of Hank Williams under Alabama law and the facts of the case; thirdly, that even if the child has not been legitimated she should share in the estate as the natural daughter of Hank Williams and lastly, that there can be but little question that this child has a present right under the Copyright Laws of the United States to share in the income from the Hank Williams compositions. . . .

The Court issued its first Order on December 1, 1967. It was in the Williams, Sr. Estate case. In the Order the court found as follows.

> The principle issue raised by the Petition . . . and by the Answer . . . is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been

> legitimated (sic) under Alabama's statutory procedure. The Guardian Ad Litem has also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams and as such has certain right under the Federal Copyright Statutes. *The Court does not believe it is necessary to make this latter determination* (emphasis added).
>
> In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams. . . .
>
> IT IS THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:
>
> . . . . 2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

The Order of the Circuit Court in the guardianship estate case was issued on January 30, 1968. In that order, the Court went further and made additional findings and drew additional conclusions of law relative to the status of Stone. The Court found:

> Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

> The Court is impressed with the argument of the Guardian Ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when illegitimate off-spring should be afforded adequate property rights. The Common law is severe in calling such off-spring a "non-person" or a "person of no blood".
>
> However, the evidence in this case is without dispute, this off spring of one Bobbie W. Jett is not now a "person of no blood".
>
> The evidence shows the child has been . . . adopted. . . . By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.
>
> . . . It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:
>
> . . . 2. That the child born to one Bobbie W. Jett is not an heir of the late Hiriam (Hank) Williams within the meaning of the Copyright Law.

Neither the December 1, 1967 Order in the Estate proceeding nor the January 30, 1968 Order in the Guardianship Proceedings was appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Those Orders therefore became final pursuant to applicable Alabama law.

Following the death of Williams, Sr., Fred Rose Music, Inc. and Milene Music, Inc., and their

predecessors in interest paid to the estate of Williams, Sr. royalties arising from the usage of the songs composed by Williams, Sr. Following the 1967 and 1968 Orders of the Circuit Court for Montgomery County, and in reliance thereon, royalties were paid to Williams, Jr. as the sole heir of Williams, Sr.

It is interesting to note that even in the light of the Circuit Court Orders, Robert Stewart, who was appointed as the Administrator in 1969, presumably out of an abundance of caution, continued to set aside money for Stone. In a series of letters to the attorney for Williams, Jr., Stewart stated that "the last two distributions to Randall- . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." In April of 1974, Stewart advised counsel for Williams, Jr. that Stone had claimed her homestead which had been set aside for her in the Lillian Stone estate. Stewart wrote that Stone's "ancestry may well be reasonably obvious to her, and further trouble may ensue."

The Estate of Williams, Sr. would be closed in August of 1975 without further incident relative to the issue of Stone's rights, if any, to a share in said estate.

In January of 1974, Cathy Stone reached the age of majority. While attending the University of Alabama, she was informed by her adoptive mother that Williams, Sr. might be her father. Stone was also advised that the Circuit Court of Montgomery County was holding certain funds for her from the estate of Lillian Stone. Stone traveled to Montgomery and received the proceeds from the estate of her former adoptive mother. It appears from

the record that it was at about this time that Stone began to seriously seek information concerning her parentage.

From 1976 to 1979 Stone had several encounters with individuals that had knowledge surrounding her earlier years. It appears form [sic] the record that Stone had formed an opinion as to her parentage as early as the Fall of 1979. Stone continued to retrieve documents that bore on the issue throughout the period of 1979 through 1980.

On July 1, 1985 Stone filed an action in the Circuit Court of Montgomery County requesting that certain documents that had been placed under seal be released to her. On August 5, 1985 Stone wrote a demand letter to Williams Jr. and Acuff-Rose/Opryland advising them of Stone's claimed interest in Williams' copyrights. On September 12, 1985, Stone filed an action in the United States District Court for the Southern District of New York, Civil Action No. 85. Civ. 7133 JFK, relative to her alleged rights in the copyrights of musical compositions written in whole or in part by Williams, Sr.

The instant suit was commenced by the Plaintiffs on September 10, 1985 by Complaint for Declaratory Judgment and Injunctive Relief. The Complaint was amended twice with the last amendment being filed on November 14, 1985. Stone filed her Counter claim for Establishment of Paternity, Declaration of Rights and Imposition of Constructive or Resulting Trust on October 14, 1986. Her third party complaint was also filed on that date.

The issues raised by the motions for summary judgment presently before the Court are as follows:

Whether, because of her illegitimate status and her status as an adopted child, Stone is barred by applicable state law from now attempting to establish that she is an heir of the Williams, Sr. estate.

Whether, consistent with prior orders and judgments of this Court, Williams, Jr. is the sole heir of the Williams, Sr. estate and as such has exclusive rights to all proceeds generated in the past by the estate and in the future from copyrighted materials.

Whether Stone has ever been adjudicated to be a child of Williams, Sr.

Whether, based upon the facts not now in Dispute, the third party complaint states a cause of action upon which relief may be granted.

It is obvious from the record that if Stone is in fact the child of Williams, Sr. she is an illegitimate child who was subsequently twice adopted. It is also obvious from the record that Williams, Sr. died intestate. The issue that naturally arises is what rights an after-adopted illegitimate child has to assert a claim against her reputed biological father's estate.

The answer to that question within the context of this case appears to be none. The issue that inevitably follows that determination is what remedies are available to an illegitimate under Alabama law to establish paternity so as to have a bona fide claim to the proceeds of the intestate father's estate.

Presently, there are four ways in the State of Alabama to legitimate a child so that the child can inherit from an intestate father. Two of the methods require either the

marriage of the father and mother and recognition by the father of the child as his own or the filing of a formal written declaration attested by two witnesses. The third method relates to the procedure under the Alabama Uniform Parentage Act (hereinafter referred to as AUPA) which is codified in Section 26-12-1, *et. seq.*, Code of Alabama 1975 as amended. Finally, the fourth alternative is found in the Alabama Probate Code at Section 43-8-48 Code of Alabama 1975 as amended.

The Court is of the opinion that as to the Plaintiffs' claim and as to Stone's counterclaim, the above cited procedures that are presently available are the ones that shall be determinative of the issues that relate to them.

It is undisputed that neither of the first two procedures is applicable in this case. Williams, Sr. died prior to Stone's birth, he never married Stone's mother, and no formal declaration of paternity that met statutory requirements was ever filed.

The fact that Stone was twice adopted after birth acts as a bar to recovery under the AUPA, specifically Section 26-17-6-(e), supra. That section clearly provides that an adopted child may not bring an action to establish paternity under the Act.

In addition, the fact that Stone was twice adopted forecloses recovery under the Alabama Probate Code, Section 43-8-48, supra. That section clearly provides that an adopted person is the child of an adopting parent and not of the natural parents. Stone argues that the fact that she was unadopted at the time of Williams, Sr.'s death would remove her from the applicability of Section 43-8-48. The Court disagrees. At the time of Williams,

Sr.'s death there did not exist a legal relationship between Stone and Williams, Sr. that would entitle her to inherit. If that were the case, Section 43-8-48 would not even be applicable since that section becomes important only if one is attempting to establish that such a relationship does in fact exist.

Assuming arguendo that the Court determined that it should apply the law as it existed at the time of Stone's birth to the issues in this case, the Court is of the opinion that Stone would still be barred from recovery in her counterclaim. To prevail, Stone must establish the existence of a relationship between herself and Williams, Sr. that would allow her to have a valid claim against his estate. Because of the factual circumstances that exist, that becomes an impossibility irrespective of whether the Court applies existing law or the law of 1952.

The 1967 preceedings in the Circuit Court of Montgomery County involved the question of whether or not Stone was an heir of Williams, Sr. At that time, an illegitimate child could not inherit from its natural father unless the child had been legitimated. As Stone had not been lgitimated [sic], the Court held that Stone was not an heir and as a result not entitled to share in the estate. Although the law today differs from relevant applicable standards in 1967, the doctrines of res judicata and collateral estoppel nonetheless now preclude Stone's claim to a share in the William's, Sr. estate. Since the issue and claim by Stone that she is an heir and entitled to inherit was decided in the 1967 proceeding in which the parties were the same, she is thus barred from relitigating that identical issue and claim in this case.

Turning to the issue of the alleged status of Stone as the child (as opposed to legal heir) of William's Sr., it is clear from the record that there was never a judicial determination relative to the biological relationship between Stone and William's, Sr. As the Court noted in 1967, it was not necessary for the Court to make such a determination in reaching its decision at that time as it was irrelevant. Thus, res judicata and collateral estoppel do not affect that question and it remains an issue of disputed fact between the parties.

As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful and or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged fraudulent concealments puportedly [sic] occurred, full disclosure to the Court or to interested third parties would have been superfluous. Therefore, the Court is of the opinion that the Third Party Complaint

does not state a cause of action for which recovery can be had.

It appears from the record and from a complete review of the proceedings in this case that the law requires that the Court enter a Partial Summary Judgment in this cause. The Court finds that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. This issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings.

Based on the foregoing it is therefore ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the original Complaint is GRANTED as to all issues with the exception of whether or not the Defendant is the biological child of Williams, Sr.

The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the Counterclaim is GRANTED as to all issues.

The Motions for Summary Judgment filed by the Plaintiffs and the Third Party Defendants as they relate to the Third Party Complaint are GRANTED on all issues.

Further proceedings in this cause are hereby set on the 25th day of August, 1987 at 10:00 A.M.

DONE THIS THE 14th DAY OF JULY, 1987.

/s/ H. MARK KENNEDY
H. MARK KENNEDY
CIRCUIT JUDGE

Sterling Culpepper
David Johnson
Robert Black
James Hampton
Christian Horsnell
Richard Frank, Jr.
James E. Williams
F. Keith Adkinson
James A. Goodman/Vincent H. Chieffo
Alan Shulman
Stephen K. Rush
Thomas Levy

APPENDIX J-2

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., both Tennessee Corporations,	)	CASE NO. CV-85-1316-K
PLAINTIFFS,	)	
vs.	)	
CATHERINE YVONNE STONE,	)	
DEFENDANT.	)	

FINAL ORDER

This Cause now comes before this Court for Final Disposition pursuant to previous Orders and proceedings in this matter. Before the Court at this time are all forms of evidentiary matters, the pleadings as filed and post-trial briefs that have been submitted by learned counsel.

The Court on the date of the last hearing took under advisement certain offerings of evidence. The Court will now rule on the admissibility of those items and on any and all outstanding posttrial motions before proceeding to the merits of the remaining issue.

The following exhibits have been offered into evidence, objected to, and are pending admission by the Court:

Defendant's Exhibits 1, 5, 13, 14, 16, 17, 33, 35 & 41.

Upon review of the exhibits as outlined above, the Court does hereby sustain the objections to proffered exhibits nos. 1, 5, 13, 14, 16 and 17.

Upon review of the exhibits as outlined above, the Court does hereby overrule the objections to proffered exhibits nos. 33, 35 and 41 and the same are hereby admitted into evidence.

On October 7, 1987 Defendant filed a Motion to Strike the Posttrial Brief of Plaintiff. That Motion is Denied.

Plaintiffs throughout these proceedings, subsequent to this Court's Order on Motions for Summary Judgment, have objected to this Court's proceeding forward and have excepted to the Court's interpretation of the state of the pleadings. Regardless of whether the question is framed as, is the Defendant the natural daughter of Williams, Sr., or is Williams, Jr. the only natural child, the Court reiterates that the issue that remains before the Court is the biological status of Defendant Stone. The Court is of the opinion that that issue was raised by the Plaintiffs in the original Complaint, was joined by the Defendant, and now is a legitimate, justiciable issue.

In lieu of making additional findings of fact, the Court adopts the findings as stated in the previous Orders of this Court. Based upon those findings and the additional evidence as submitted at the hearing of September 2, 1987, the Court is of the Opinion that it continues to have jurisdiction over the parties and of the

subject matter and does hereby enter the following Final Order.

The Court upon consideration of the evidence does hereby find that Hank Williams, Jr. is not in fact the only natural child of Hank Willimas [sic], Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr.

DONE THIS THE 26TH DAY OF OCTOBER, 1987

/s/ H. Mark Kennedy
H. MARK KENNEDY
CIRCUIT JUDGE

Honorable Sterling Culpepper
Honorable David Johnson

APPENDIX K-1

IN THE MATTER OF THE ESTATE OF HIRIAM "HANK" WILLIAMS,	) IN THE CIRCUIT COURT) OF MONTGOMERY) COUNTY, ALABAMA, IN) EQUITY. Case) No. 25056

ORDER

This matter now coming on for hearing is submitted on the amended petition filed by Audrey M. Williams and Randall Williams, the Answer of Irene W. Smith, as Administratrix of the Estate of Hiriam Hank Williams, to the Petition as last amended, the Acceptance of his appointment and the Answer of the Guardian ad Litem to the Petition as last amended, the testimony as noted by the Register and stipulations entered into by the parties through their attorneys of record.

Counsel for the Williams Estate has advised the Court that he does not insist upon his motion to require security for costs and said motion should, therefore, be overruled.

The Court has carefully considered the testimony and the evidence presented by the parties in this case and helpful briefs filed by their attorneys.

The principal issue raised by the Petition as last amended and by the Answer of the Administratrix is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been ligitimated under Alabama's statutory procedure. The Guardian ad Litem has

also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams, and as such may have certain rights under the Federal Copyright Statutes. The Court does not believe it is necessary to make this latter determination.

In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams.

The Petitioners and the Administratrix recognize in their pleadings that this estate should remain open because there are or may be unliquidated accounts due the estate, and pending amendments to the Federal Copyright laws make further administration advisable. This Court is, therefore, of the opinion that the Administration of this estate should continue, as it has in the past, under the supervision of this Court.

All issues presented by the pleadings in this case and not specifically decided should, therefore, be reserved.

The Court has considered the time spent and the expenses incurred by the Guardian ad Litem and is of the opinion that he is entitled to a reasonable fee and to be reimbursed for his actual expenses, and that said fee and expenses should be paid by the Estate.

IT IS, THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:

1. That the motion of Irene W. Smith as Administratrix to require the Petitioner to furnish security for costs is hereby overruled.

2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

3. That the fee of the Guardian ad Litem, Drayton N. Hamilton, is fixed at Two Thousand Dollars ($2,000.00), which includes his expenses through the date of trial.

4. All other matters are reserved.

5. The costs of these proceedings, including the fee and expenses of the Guardian ad Litem, are taxed against the Estate of Hiriam Hank Williams, for which execution may issue.

Done this 1 day of Dec, 1967.

/s/ Richard P. Emmet
Circuit Judge

APPENDIX L-1

IN THE MATTER OF THE GUARDIANSHIP OF THE ESTATE OF RANDALL HANK WILLIAMS, a minor.	:	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA IN EQUITY CASE NO. 27,960

This cause comes on to be heard upon the pleadings, all as noted by the Register.

This Court finds it has jurisdiction of the cause and of the parties.

As to the question of jurisdiction of the cause, the Court rejects the contentions of Respondent Smith and Respondent Rose as to the application of any Statute of Limitation.

This Court has now exercised continuing jurisdiction of this guardianship for some fifteen years. In this or any other guardianship there occurs nothing during the course of the guardianship to which any Statute of Limitation applies insofar as any conduct between the guardian and ward. The inherent rules of equity jurisdiction would allow a subsequent review of any conduct by the guardian. The relationship existing between a guardian and a ward is never a relationship of opposing advocates. As such, the approval by the Court, exercising continuing jurisdiction of the guardianship, of the conduct of a guardian in any situation is subject to subsequent review by that Court upon additional evidence being presented. It matters not in what mode of pleading such evidence is

presented. Indeed, a Court, *ex mero motu*, should act upon such evidence. The only rule prescribed by law of the state is to protect the interest of the ward. Likewise, any third party desirous of contracting with the ward is subject to the same continuing jurisdiction.

The Court rejects further the contention that only upon actual and extrinsic fraud can the previous decree of *this* Court be vacated. The cases relied upon in this contention concern the vacating of decrees by one Court of other Courts' decrees. None of the cases cited concern an interest of a Court's Ward.

This Court, exercising continuing jurisdiction of the guardianship and being governed only by the rule of law which requires the best interest of the ward to be paramount, is allowed to weigh any legal evidence properly presented at any time now or subsequent as to any contractual relationship previously approved by this Court. There exists no limitation to this inherent right of equity in protecting a ward.

It follows that this Court has jurisdiction of this cause and has the duty at this time of looking further into the matter of this Court's Decree in this same cause dated March 19, 1963.

A finding of fact in this guardianship is incomplete without an incorporation of the facts elicited from the evidence in scores of other hearings in this case and in the Estate of Hiriam (Hank) Williams, Case No. 25,056, Fifteenth Judicial Circuit of Alabama.

This Court has carefully reviewed the evidence in its entirety. The review has not been in the light of any

narrow restrictions suggested by the contentions of jurisdictional or statutory limitations or burdens of proof as to actual and extrinsic fraud. This Court has weighed the evidence only in the light of the best interest of this ward. In this light, and with the benefit of hindsight in now looking back through the years to the year 1963, it is inescapable that the contract in question was then and is now in the best interest of the ward. The Court finds that the relationship created by the contract is provident for the ward.

The Court finds there are aspects of the relationship created by this contract which are not subject to the utmost clarity. These aspects concern the unpublished artistic work of the deceased father of the ward; the benefits of affiliation with the performing societies; and future royalty schedules being more completely detailed. The Court finds the best interest of the ward requires that these matters be spelled out in detail. The Court is aware that these questions might possibly be matters within the framework of the Estate, however, they have a direct bearing on the guardianship.

Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

The Court is impressed with the argument of the Guardian ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when

illegitimate off-spring should be afforded adequate property rights. The common law is severe in calling such off-spring a "non-person" or a "person of no blood".

However, the evidence in this case is without dispute, this off-spring of one Bobbie W. Jett is not now a "person of no blood".

The evidence shows the child has been permanently adopted under the very excellent, wise, and beneficial direction of this State's Department of Pensions and Security. By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.

The Court is of opinion that the Copyright Law as interpreted by the Supreme Court of the United States in *DeSylva v. Ballentine*, 351 U.S. 570; 100 L.Ed. 1415; 76 Sp. Ct. 974, preclude the inclusion of any heir other than the ward of this Court as having any right of renewal, provided the ward survives to the appropriate time.

Notwithstanding the proposed revision of the Copyright Law of this nation pending in the Congress, this Court retains the same opinion.

The pen of this Court cannot rest without one final finding. The attorney for this guardian and for the estate traces his professional connection from the time when the name Hank Williams was but another "drifter" passing

before the Bench of a local small claims and misdemeanor Court. But for the professional care, tenacity, diligence, interest and concern of this gentleman, the estate of this ward would not be as considerable as it is, nor would its future prospects be so bright. His conduct is in the highest tradition of a very noble profession.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

1. That the contract in question is in the best interest of the ward and that the decree of this Court dated March 19, 1963 should not be vacated.

2. That the child born to one Bobbie W. Jett is not an heir of the late Hiriam (Hank) Williams within the meaning of the Copyright Law.

3. That certain provisions of the contract do not contain sufficient clarity. That these provisions are subject to additional attention by the parties hereto. That in the failure of the parties hereto to reach accord, the Court upon application will proceed to adjudge these matters. That the Court retains jurisdiction of this cause to effect this provision.

It is regrettable cordiality does not exist in this situation. It would seem that the large and significant community of interest between the ward and Respondent Rose could build a bridge which would renew and continue one of the very few genuine traditions found in the entire entertainment industry, now noted for its phony traditions. It is hoped by the Court that this area of negotiation will lead to this.

4. That the fee of the Guardian ad Litem be $5,698.72 which sum shall include all expenses including travel and that the same be taxed as part of the cost.

5. That the cost of these proceedings be taxed one-third against the guardianship and two-thirds against Respondent Rose. The taxing against the guardianship is based upon the fact that the funds expended belong to the ward and the ward is now the only petitioner.

DONE, this the 30 day of Jan, 1968.

/s/ Richard P. Emmet
Circuit Judge

Supreme Court, U.S.
FILED
APR 19 1993
OFFICE OF THE CLERK

No. 92-1288

In The

Supreme Court of the United States

October Term, 1992

HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. WHETHER DUE PROCESS REQUIRES RE-LITIGATION OF THE ALABAMA SUPREME COURT'S 1989 RULING THAT RESPONDENT IS THE NATURAL CHILD AND HEIR OF HANK WILLIAMS, SR. NOW THAT THE PARTIES THERETO HAVE SETTLED?

2. WHETHER THE COPYRIGHT ACT'S THREE-YEAR STATUTE OF LIMITATIONS, 17 U.S.C. § 507(b), SHOULD BE INTERPRETED TO FORFEIT RESPONDENT'S INTEREST IN THE ENTIRE 47-YEAR TERM OF THE UNITED STATES RENEWAL COPYRIGHTS IN THE MUSICAL COMPOSITIONS WRITTEN BY HER FATHER, HANK WILLIAMS, SR.?

3. WHETHER, UNDER THE COPYRIGHT ACT OF 1976, A CHILD OF A DECEASED AUTHOR FORFEITS HER OWNERSHIP OF THE RENEWAL COPYRIGHTS TO COMPOSITIONS OF HER FATHER IF, AFTER THE DEATH OF HER FATHER AND BEFORE THE VESTING OF THE RENEWAL COPYRIGHTS, SHE WAS ADOPTED BY THIRD PARTIES?

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IV. STATEMENT OF THE CASE[1]

Respondent is the natural daughter of Hiram "Hank" Williams, Sr. ("Hank Williams, Sr.") and Bobbie W. Jett ("Jett"). Respondent's status as the natural child of Hank Williams, Sr. was judicially determined after a 1987 bench trial in Alabama against Petitioner Hank Williams, Jr. ("Williams, Jr."), and Petitioners Roy Acuff and Wesley Rose, as trustees in liquidation of Petitioners Fred Rose Music, Inc. and Milene Music, Inc. (the "Acuff/Rose Petitioners"). (App. J-1.20, J-2.3). The Acuff/Rose Petitioners are the predecessors-in-interest to Petitioners Acuff Rose Opryland Music, Inc. and Milene-Opryland Music, Inc. (the "Opryland Petitioners") with respect to the United States renewal copyrights in the music compositions written by Respondent's father (the "Renewal Copyrights"). This judgment has never been appealed and the Alabama Supreme Court found the paternity judgment to be undisputed and established by "clear and convincing evidence." (App. I-1.49 & n.23). Contrary to Petitioners' statement of facts, there is nothing "alleged" about Respondent's status as the natural child of Hank Williams, Sr. All of the Petitioners were either parties or, privies to parties, to the trial in Alabama which established this fact. Almost six years later, Petitioners are still

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[1] Only those facts pertinent to whether certiorari should issue, which are not in petitioners' statement of the case, are set forth herein. A more comprehensive statement of the facts can be found in *Stone v. Gulf American Fire & Casualty Co.*, 554 So.2d 346 (Ala. 1989), *cert. denied*, 496 U.S. 943, 110 S. Ct. 3229, 110 L. Ed. 2d 676 (1990) (App. I-1 *et seq.*, and I-2 *et seq.*), and in Respondent's Petition for Writ of Certiorari in *Stone v. Williams, Jr.*, et al. No. 89-295. References to "App." are to the Appendices to the Petition for Writ of Certiorari.

trying to avoid the natural consequences of the paternity trial's outcome.

The Alabama litigation was commenced by Petitioners and sought a declaration that Respondent was neither the child nor the heir of Hank Williams, Sr. (App. I-1.2 & n.2). In her third party complaint, Respondent alleged, among other things, fraud and conspiratorial concealment of her existence and identity from the Alabama court supervising the estate of Hank Williams, Sr. and requested that the estate be re-opened and that she receive her 50% proportionate share of that estate. Petitioners at all times received notice of the proceedings in the Alabama litigation including Respondent's appeal to the Alabama Supreme Court seeking to have the estate of Hank Williams, Sr. re-opened and to have herself declared as an heir, entitled to a 50% interest in that estate. Petitioners elected not to participate directly in that appeal procedure until after the Alabama Supreme Court issued its opinion in July of 1989. In that opinion, the Alabama Supreme Court held that Respondent was an heir, along with Williams, Jr., of Hank Williams, Sr., reopened the estate, and declared that Respondent was entitled to a 50% share of the proceeds of the Hank Williams, Sr. estate for all time in the future, but limited her recovery of past damages to distributions made since August of 1982. (App. I-1.1 *et seq.*).

Thereafter, Williams, Jr. petitioned the Alabama Supreme Court to vacate and modify its July 1989 opinion. In an extensive opinion, the Alabama Supreme Court reviewed Williams, Jr.'s arguments, including the constitutional arguments restated herein, rejected them, and

denied his petition to vacate and modify its earlier opinion (App. I-2).

Williams, Jr. then petitioned this Court for Writ of Certiorari to review the Alabama Supreme Court's July and November 1989 opinions, which petition was denied. 496 U.S. 943, 110 S. Ct. 3229 (1990).

Still dissatisfied with the results of the proceedings before the Alabama Supreme Court, Williams, Jr. then filed an action in the United States District Court for the Middle District of Alabama asserting, as he does here, that the Alabama Supreme Court decision was constitutionally infirm and could not be enforced by the Alabama trial court. This position was rejected by the district court, *Williams v. Adkinson*, 792 F. Supp. 755 (M.D. Ala. 1992), in an opinion recently affirmed *per curiam* by the Court of Appeals for the Eleventh Circuit. *Williams v. Adkinson*, 1993 U.S. App. Lexis 3439 (11th Cir. 1993). (Resp. App. 1a).

At the end of last month, March 1993, Petitioner Williams, Jr. and Respondent completely resolved by written agreement the Alabama action regarding the estate of Hank Williams, Sr. As a result, the litigation between them in the Alabama Circuit Court on remand from the Alabama Supreme Court will soon be dismissed, and the estate of Hank Williams, Sr. ordered distributed to Petitioner Williams, Jr. and to Respondent.

V. REASONS FOR DENIAL OF THE WRIT

As the Second Circuit recognized, Respondent's efforts to establish her rights as a natural child of Hank Williams, Sr. to share in his estate as his heir, and to co-

own the United States Renewal Copyrights to his compositions, has resulted in over seven years of "bitter litigation." (App. A-1.2). Allied against Respondent have been the son and widow of Hank Williams, Sr. and the publishing companies who claim interest in the Renewal Copyrights through them. Not only has this been "bitter litigation" but it is the culmination of 40 years of fraud, deception, and deceit, practiced not only upon Respondent but also upon the Alabama Courts. In 1989 the Alabama Supreme Court was finally presented with an opportunity to review the shameful and fraudulent conduct by which Respondent was excluded from the enjoyment of the fruits of her father's labor, and the circumstances by which Petitioners have gained the benefit of such wrongful acts. In response, the Alabama Supreme Court concluded that the Alabama courts have been consistently deceived and defrauded from the death of Hank Williams, Sr., in 1953 through the initial closing of the estate in 1974. (App. I-1.55). The wrongdoing was found to be so egregious that prior orders entered during the pendency of the estate were vacated, the estate reopened, and the undisputed natural child of Hank Williams, Sr., was found to be an heir of Hank Williams, Sr. (App. I-1.1, 1.36, 1.55). This portion of Respondent's litigation effort has now been successfully concluded and the Alabama litigation against Williams, Jr. will be dismissed and the estate distributed to Respondent and Respondent Williams, Jr.

This "bitter litigation" has to date spawned three prior petitions to this Court for review by writ of

certiorari.[2] In all three prior instances, review has been denied[3], as it should be in this fourth effort. As has been recognized by every court that has considered it, this "bitter litigation" is based upon unique facts and peculiar circumstances, but is, after all, merely a contest "between Hank Williams' heirs over copyright renewal rights." (See, App. at I-1.54, C-1.9). Given the resolution of the Alabama estate litigation, there is even less justification now than before for review by this Court.

Petitioners point to no conflict among decisions of United States Courts of Appeals on any of the questions presented. No important question of federal law has been presented which should be settled by this Court, or which has been decided in a way that conflicts with applicable decisions of this Court. Indeed, several of the defendants equally aggrieved by the decision of the Court of Appeals have not even joined in that petition. Defendants Billie Jean Williams Berlin, the widow of Hank Williams, Sr., and her music publishers, Chappell & Co., Inc., and Aberbach Enterprises, Ltd., have not sought review of the Court of Appeals decision.

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[2] *Williams, Jr. v. Stone*, Case No. 89-1538 (on petition for writ of certiorari to the Supreme Court of Alabama); *Williams, Jr. et al. v. Stone*, Case No. 89-1563 (on petition for writ of certiorari to the United States Court of Appeals for the Second Circuit); *Stone v. Williams, Jr.*, Case No. 89-295 (on petition for writ of certiorari to the United States Court of Appeals for the Second Circuit).

[3] *Stone v. Williams*, 873 F.2d 620 (2d Cir. 1989), *cert. denied*, 493 U.S. 959, 110 S. Ct. 377, 107 L. Ed. 362 (1989), *vacated*, 891 F.2d 401 (2d Cir. 1989), *cert. denied*, 496 U.S. 937, 110 S. Ct. 3215, 110 L. Ed. 62 (1990); *Stone v. Gulf American Fire & Casualty Co.*, 554 So.2d 346 (Ala. 1989), *cert. denied*, 496 U.S. 943, 110 S. Ct. 3229, 110 L. Ed. 2d 676 (1990).

A. DUE PROCESS DOES NOT REQUIRE THAT RESPONDENT MUST RE-LITIGATE THE 1989 ALABAMA SUPREME COURT RULING THAT SHE IS THE NATURAL CHILD AND HEIR OF HANK WILLIAMS, SR.

Petitioners' attack on the Second Circuit's opinion is nothing more than Petitioners' third attempt to obtain review of the Alabama Supreme Court's 1989 decisions and to force a re-trial of the paternity issues resolved against them at trial in Alabama. Both this Court, and the Court of Appeals for the Eleventh Circuit, have previously declined to review Petitioners' claim that the Alabama Supreme Court deprived Williams, Jr. of constitutional due process. Petitioners' third try should meet the same result. It would be anomalous and a waste of judicial effort for this Court to review the four-year-old Alabama Supreme Court's decision now that the Alabama litigation over sharing the proceeds of the Hank Williams, Sr. estate has been finally resolved by Respondent and Williams, Jr.

Petitioners' arguments mischaracterize both the nature of the ruling of the Court of Appeals and the scope of Petitioners' participation in the Alabama Supreme Court proceedings and in the Alabama trial court proceedings in which it was ruled that Respondent is the natural child of Hank Williams, Sr. Contrary to Petitioners' arguments, the Court of Appeals did inquire into whether Petitioner had a full and fair opportunity to litigate Respondent's paternity in Alabama. Finally, the final resolution of the Alabama litigation by the parties thereto, which will now result in the distribution of Respondent's share of the estate, moots any attack upon

the Alabama Supreme Court's decision declaring that Respondent is an heir of Hank Williams, Sr.

1. PETITIONERS MISCHARACTERIZE THE COURT OF APPEALS' RULINGS WITH RESPECT TO THE 1989 ALABAMA SUPREME COURT DECISION.

Petitioners incorrectly contend that the Court of Appeals granted res judicata or collateral estoppel preclusive effect to the Alabama Supreme Court's rulings that Respondent is the natural child of Hank Williams, Sr. and that she is the heir of Hank Williams, Sr. The Court of Appeals gave preclusive effect only to the Alabama Supreme Court's determination that Respondent is the natural child of Hank Williams, Sr. The Court of Appeals analyzed "whether *Gulf American's* determination that [Respondent] is the natural child of Williams, Sr. is binding on [Petitioners]. (App. A-1.25). The Court of Appeals noted that "*Gulf American's* determination on paternity is not open to attack by [Petitioners], if they are bound by that judgment." (App. A-1.27). Having thus posed the question, the Court of Appeals expressly answered it by concluding "that [Petitioners] may not challenge the determination of the Alabama Supreme Court that [Respondent] is the natural child of [Hank] Williams, Sr." (App. A-1.39).

Thus, the Court of Appeals did not find or rule that Petitioners were precluded by res judicata or collateral estoppel from litigating the issue of whether or not Respondent could inherit under the Alabama intestacy laws from her father, Hank Williams, Sr.

In a subsequent ruling, the Court of Appeals decided that Respondent was a member of the statutory class of owners of the renewal copyrights where the author did not survive to the vesting of the renewals because she was a "child" of Hank Williams, Sr. under the Copyright Act of 1909, § 24, and the Copyright Act of 1976, § 304(a). The Court of Appeals followed in both instances the teaching of this Court that an illegitimate child is a "child" for these purposes if the illegitimate child is allowed to inherit from his/her deceased author parent under applicable state law. *De Sylva v. Ballentine* 351 U.S. 570, 76 S. Ct. 974, 100 L. Ed. 1415 (1956). Thus, the Court of Appeals followed the Alabama Supreme Court's decision that Respondent was an heir of Hank Williams, Sr., not because Petitioners were bound by the doctrines of collateral estoppel or res judicata, but rather because the Alabama Supreme Court's decision was the interpretation of applicable Alabama State law on the heirship issue by Alabama's highest court, which decision was binding on the court below. Rules of Decision Act, 28 U.S.C. § 1652; *Groppi v. Wisconsin*, 400 U.S. 505, 508, 91 S. Ct. 490, 492, 27 L. Ed. 2d 571 (1971). (App. A-1.43). Indeed, the Court of Appeals would be required to follow the Alabama Supreme Court's decision that Respondent is the heir of Hank Williams, Sr. even if none of the Petitioners had participated in any way in the Alabama litigation.

2. PETITIONERS ARE BOUND BY THE ALABAMA SUPREME COURT'S DECISION THAT RESPONDENT IS THE NATURAL CHILD OF HANK WILLIAMS, SR. BECAUSE THEY WERE EITHER PARTIES, OR PRIVY TO PARTIES, TO THE ALABAMA PATERNITY TRIAL AND TO THE ALABAMA SUPREME COURT PROCEEDINGS.

Throughout their Petition, Petitioners seek to give the impression that they did not participate in, and were not parties to, the proceeding by which it was determined that Respondent is the natural child of Hank Williams, Sr. This is simply not true. In 1987, Petitioner Williams, Jr. and the Acuff/Rose Petitioners fully participated in the bench trial that resulted in the judgment that Respondent is the natural child of Hank Williams, Sr. (App. J-1.19-.20; J-2.1-.3). These Petitioners also participated in the summary judgment proceedings that resulted in the extensive and factually detailed order of then Alabama Circuit Judge H. Mark Kennedy. (App. J-1.1, *et seq.*). It was the very facts found by Judge Kennedy upon Petitioners' own motion upon which the Alabama Supreme Court based its rulings. (App. I-1.4). The Opryland Petitioners are the successors-in-interest to the Acuff/Rose Petitioners in the Hank Williams, Sr. Renewal Copyrights and, as such, are privies to them under Alabama law with respect to these trial court determinations. *Watson v. Mills*, 275 Ala. 176, 153 So.2d 612, 614 (Ala. 1963) ("The term 'privity' denotes mutual or successive relationship to the same right of property.")

Petitioners argue that they did not participate in the Alabama Supreme Court proceeding in which Respondent sought to have herself declared an heir of Hank Williams, Sr. and to re-open the Hank Williams, Sr. estate, even though they had notice of that appeal. Even assuming Petitioners' assertion to be true, which Respondent does not concede, this assertion has no bearing on the preciusive effect of the finding after trial in the Alabama Circuit Court that Respondent is the natural child of Hank Williams, Sr. The Alabama Supreme Court correctly characterized the trial court's finding on paternity to be "undisputed" and "established by clear and convincing evidence" at trial (App. I-1.49, n.23). Had there been no appeal by Respondent, the trial court decision that she was the natural child of Hank Williams, Sr. would still be binding on Petitioners.

Contrary to Petitioners' arguments, the Court of Appeals correctly found that, under Alabama law, Williams, Jr. was a party to the proceeding in which the Alabama Supreme Court decided that Respondent, as the undisputed child of Hank Williams, Sr., was an heir to the estate of Hank Williams, Sr. (App. A-1.32). This question was decided by the Alabama Supreme Court under Alabama law, and the Court of Appeals was precluded from deciding otherwise. *Kremer v. Chemical Const. Corp.*, 456 U.S. 461, 481-82, 102 S. Ct. 1883, 1897-98, 72 L. Ed. 2d 262 (1982). Based on Williams, Jr.'s and the Acuff/Rose Petitioners' participation in the paternity proceedings, Williams, Jr.'s participation in the Alabama Supreme Court proceedings, and the detailed consideration that the Alabama Supreme Court gave the various arguments raised by Williams, Jr., the Court of Appeals concluded that the

issue of whether Respondent is the natural child of Hank Williams, Sr. was fully and fairly decided by the Alabama Supreme Court and that the state proceedings satisfied the "minimal procedural requirements of due process to qualify for full faith and credit." *Kremer, supra*, 456 U.S. at 481, 102 S. Ct. at 1897-98. (App. A-1.27-.32).

Alabama law would also treat the Acuff/Rose Petitioners and the Opryland Petitioners as privies to Williams, Jr. in this regard. As noted above, the Acuff/Rose Petitioners were parties to, and actually participated in, the trial at which Respondent was found to be, by clear and convincing evidence, the natural child of Hank Williams, Sr. This ruling was not appealed and was undisputed before the Alabama Supreme Court. These Petitioners were not found to be parties to the Appeal, but were found to be bound by the Alabama Supreme Court decision as being in privity with Williams, Jr. (A-1.33-.37). This decision, as noted by the Court of Appeals, was determined by that Court's "sense of justice and equity," and the Court of Appeals stated that it did "not believe it fundamentally unfair or incompatible with notions of justice or due process to bind defendants by *Gulf American's* findings of paternity." (App. A-1.38). Upon this record, it is impossible to reasonably assert that Petitioners did not have a "full and fair opportunity to litigate the issue [of Respondent's paternity] in that prior adjudication." *Kremer*, 456 U.S. at 480-81 & n.22, 102 S. Ct. at 1896-97 & n.22. This decision, in large part dependent upon the unique and special circumstances surrounding the forty-year conspiracy to prevent Respondent from enjoying the state and federally-recognized benefits to be derived from her natural father, Hank

Williams, Sr., is thus simply not a proper subject for review by this Court.

3. THE COURT OF APPEALS DID INQUIRE INTO WHETHER PETITIONER WILLIAMS, JR. HAD A FULL AND FAIR OPPORTUNITY TO LITIGATE THE ISSUE OF RESPONDENT'S PATERNITY.

Petitioners' argument that the Court of Appeals failed to conduct an independent inquiry into Petitioners' arguments that the 1989 Alabama Supreme Court decision denied them due process is utterly frivolous as even a casual reading of the Court of Appeals' decision will reveal. All that Petitioners are really arguing is that in the District Court they were successful with their argument that the Alabama Supreme Court should not be given full faith and credit, but they lost this argument before the Court of Appeals. (Petition at 16).

Nor did the Court of Appeals blindly accept any recitals by the Alabama Supreme Court. Petitioner confuses two issues analyzed by the Court of Appeals. First, the Court of Appeals analyzed the preclusive effect of the Alabama Supreme Court's ruling upon Williams, Jr. under Alabama law. In this regard, the Court of Appeals correctly noted that, under Alabama law, the Alabama Supreme Court's decision was binding upon Williams, Jr., that the Alabama Supreme Court had in rem jurisdiction, and that Williams, Jr. was not denied due process under Alabama state law. (App. A-1.30-1.32). The Court of Appeals cited *Kremer*, 456 U.S. at 481, 102 S. Ct. at 1897, to

support its conclusion that "state proceedings need do no more than satisfy the minimal procedural requirements of due process to qualify for full faith and credit." Second, with respect to the determination that Respondent is the natural child of Hank Williams, Sr., the process afforded to Williams, Sr., and the other Petitioners, was far more than "minimal procedural requirements." Williams, Jr., as well as the Acuff/Rose Petitioners, directly participated in, and were parties to, the trial at which the fact of Respondent's paternity was established. This trial court finding was correctly deemed "undisputed" by the Alabama Supreme Court.

The Court of Appeals also carefully analyzed the due process issues relating to the Petitioners other than Williams, Jr. arising from its decision to give full faith and credit to the Alabama Supreme Court's decisions. (App. A-1.37-.39).

What Petitioner Hank Williams, Jr. really seeks is a re-trial of the paternity issue that was conclusively determined after trial in Alabama and which was never thereafter appealed by him, or any other Petitioner. Not only are Petitioners not entitled to any such re-trial, but the entire issue is now moot.

4. PETITIONERS' COLLATERAL ATTACK UPON THE ALABAMA SUPREME COURT DECISION THAT RESPONDENT IS THE NATURAL CHILD AND HEIR OF HANK WILLIAMS, SR. ENTITLED TO PARTICIPATE IN 50% OF THE PROCEEDS OF THE ESTATE OF HANK WILLIAMS, SR., IS MOOT.

The Alabama estate litigation has finally been resolved within the last three weeks and Respondent will hereafter be receiving her share of the estate of Hank Williams, Sr. Under these circumstances, it makes no sense to re-litigate the now moot issues of paternity and heirship determined by the Alabama Supreme Court.

B. THE COPYRIGHT ACT'S THREE-YEAR STATUTE OF LIMITATIONS DOES NOT REQUIRE THE FORFEITURE OF RESPONDENT'S FEDERALLY CREATED 47-YEAR RENEWAL COPYRIGHTS IN THE COMPOSITIONS OF HER FATHER, HANK WILLIAMS, SR.

Petitioners present absolutely no reason why this Court should grant a Writ of Certiorari to review the Court of Appeals' non-controversial application of the three-year statute of limitations contained in the Copyright Act of 1976. 17 U.S.C. § 507(b).

The decision of the Court of Appeals on the statute of limitations issue is based upon long-standing principles applicable to the Copyright Act and to statutes of limitations in general. There has been no new ground broken and Petitioners can point to no conflicts between the decision of the Court of Appeals in this case and other

decisions of this Court or any other Federal Courts. Petitioners' disagreement with the Court of Appeals' decision does not justify granting their petition.

The Court of Appeals merely applied the analogous rule of *Mount v. Book-of-the-Month Club, Inc.*, 555 F.2d 1108 (2d Cir. 1977) that the Copyright Act's statute of limitation bars the recovery of damages accruing more than three years prior to the filing of a suit for infringement. As the Court of Appeals also correctly noted, the statute of limitations extinguishes remedies but not the assertion of rights. (App. A-1.16). *Prather v. Neva Paperbacks, Inc.*, 446 F.2d 338, 340 (5th Cir. 1971). Of course, this ruling also means that Petitioners can now keep Respondent's share of all Renewal Copyright royalties received prior to September 1982, ten years after the start of the first renewal copyright term.

Petitioners' entire argument is that Respondent could have commenced an action to declare her co-ownership of the renewal copyrights sooner than she did and, therefore, the statute of limitation should bar her assertion of any claim for relief based upon her co-ownership of those renewal rights. That is, Petitioners claim that Respondent should forfeit to Petitioners her co-ownership of the entire 47 years Renewal Copyright term because she did not sue within three years of the time she first learned of a possible claim. As the Court of Appeals noted, this "overly technical approach" misses the point. (App. A-1.13). A brief hypothetical illustrates the correctness of this dismissal of Petitioners' argument.

What Respondent seeks by this lawsuit is to receive her proper share of the revenues derived from the

exploitation of the renewal copyrights to her father's musical compositions. To establish her entitlement to those revenues, Respondent must prove that she is a co-owner of the renewal copyrights just as any owner of a copyright must prove that they are the owner of a copyright when they sue for infringement.

Respondent could have brought a series of lawsuits, each seeking recovery of damages from the Petitioners, but none seeking a declaration of ownership rights. After she prevailed in the first lawsuit and proved her co-ownership of the renewal copyrights, Petitioners would be barred by doctrines of res judicata from re-litigating her ownership of those renewal copyrights. At no time, however, would Respondent have ever asked for a declaratory judgment acknowledging her ownership. Petitioners' present arguments, therefore, that seek to distinguish between the remedy of damages and the declaratory relief remedy could not even have been made. Certainly Respondent cannot be found to have forfeited her entitlement to the 47 years of the renewal copyright term because she sought a declaratory judgment and damages when no such forfeiture could have even been argued if she had merely sought recovery of damages in a series of lawsuits over that 47-year period.

There is no basis for this Court to review the non-controversial application of the Copyright Act's statute of limitation in this case.

C. THAT RESPONDENT WAS FIRST ADOPTED BY HER GRANDMOTHER, AND THEN BY AN UNRELATED FAMILY, AFTER THE DEATH OF HER FATHER, HANK WILLIAMS, SR. DOES NOT WORK AS A FORFEITURE OF HER CO-OWNERSHIP OF THE RENEWAL COPYRIGHTS IN HER FATHER'S COMPOSITIONS.

Continuing in the family tradition of attempting at all costs to prevent Respondent's enjoyment of the benefits guaranteed to her by the Copyright Act as the natural child of the distinguished country music composer Hank Williams, Sr., the Petitioners go so far as to assert that Respondent should be deemed to have forfeited to Petitioners her co-ownership of the Renewal Copyrights because, after her father's death, she was first adopted by her grandmother, Hank Williams, Sr.'s mother, and then, after her grandmother's death, by an unrelated family. The cruelty and inhumanity of this argument merely underscores the wrong that Petitioners, and others, have perpetrated upon Respondent over the last 40 years.

A few months before Respondent's birth, her father and mother entered into a written agreement by which her father agreed to pay for her care and upbringing and receive actual physical custody of her. (App. I-1.5-.7). Upon Hank Williams, Sr.'s sudden and unexpected death a few days before Respondent's birth, there began a conspiracy to deny to Respondent the benefits that flow from being a child of Hank Williams, Sr. Despite her father's express and written desire to care for her after her birth, her identity and existence was fraudulently

concealed from the Alabama probate court that supervised her father's estate. (App. I-1.12-.32). As the Alabama Supreme Court has noted, (a) the custody/support agreement executed by her father was a contractual obligation that could have been enforced so that her father's estate would have paid for her care and upbringing and, (b) under Alabama law in 1953, the custody/support agreement could have been a sufficient acknowledgment of her paternity so that she would have then been legitimated and would have been deemed to be an heir to the estate from the time of her birth, 40 years ago. (App. I-1.41-.43 & n.19 and 20). All of this was denied to Respondent.

As an infant, Respondent was helpless to fight against these machinations and was subject to the cruelty, greed, and neglect of those, including the state of Alabama, whose duty it was to protect her. This fact has been acknowledged by the Alabama Supreme Court. (App. I-1.55). Having been prevented by fraud and malfeasance from either being legitimated as a result of the custody agreement, or at least having her care and upbringing paid for by her father's estate, in accordance with her father's expressed written desire, Respondent was placed up for adoption and was twice adopted. By their argument, Petitioners' attempt to continue to benefit from the fraud that had been successfully perpetrated upon Respondent until the 1989 decision of the Alabama Supreme Court. Surely, such an argument cannot support the issuance of a Writ of Certiorari by this Court.

1. THE COURT OF APPEALS' APPLICATION OF THE *DE SYLVA V. BALLENTINE* RULE IN THIS CASE TO THE RENEWALS UNDER THE 1976 COPYRIGHT ACT IS CORRECT.

The Court of Appeals correctly analyzed the issue of whether state or federal law should determine whether or not Respondent is a "child" under the 1976 Act.

The Court of Appeals determined that Congress, by enacting the 1976 Act did not intend to alter the law applicable to the determination of the category of "children" for purposes of ownership of renewal copyrights, to works originally copyrighted under the Copyright Act of 1909. This result is supported by the legislative history of Section 304(a) of the 1976 Act that Congress intended to preserve the language of the 1909 Act's "renewal provision without any change in substance." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 139, *reprinted in* 1976 U.S. Code Cong. & Admin. News 5659, 5755 (App. A-1.47-.49). Accordingly, the Court of Appeals concluded that state law identifies the owners of the property right granted by Section 304(a) of the 1976 Act as it did under Section 24 of the 1909 Act. Under this Court's decision in *De Sylva*, the Court of Appeals was required to look to Alabama state law to determine whether or not Respondent was an heir of the author, Hank Williams, Sr. The Alabama Supreme Court has expressly ruled that she is.

2. EVEN WERE THE DEFINITION OF CHILD IN SECTION 101 OF THE COPYRIGHT ACT OF 1976 APPLIED, RESPONDENT WOULD STILL BE ENTITLED TO CO-OWNERSHIP OF THE RENEWAL COPYRIGHTS.

Petitioners argue that because Respondent had been adopted after the death of her father, she is no longer a "child" of Hank Williams, Sr. under the Section 101 definition of the 1976 Act. There is nothing in the statute that should lead anyone to this bizarre conclusion.

Defendants' argument ignores the critical fact that the adoptions of Respondent occurred after Hank Williams, Sr.'s death. Whatever the merits of Petitioners' argument where the author-parent voluntarily places his/her child up for adoption,[4] it has no persuasive force in this case, where the undisputed evidence is that Hank Williams, Sr. died before Respondent was born and had expressed in writing an intent to care for and have custody of her after she was born.[5] To the extent Hank Williams, Sr.'s intent has any place in the interpretation of

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[4] The arguments probably have no merit in that situation either. See *Saroyan v. William Saroyan Foundation*, 675 F. Supp. 843, 845-46 (S.D.N.Y. 1987), *aff'd*, 862 F.2d 304 (2d Cir. 1988).

[5] As the Alabama Supreme Court noted (App. I-1.49-.50, n.23), "It is interesting to note that at the time [the custody/support] agreement was drafted, [Petitioner] Williams, Jr. did not live with his father, but rather lived in Tennessee with his mother, Audrey Williams; it appears, then, that Hank Williams, [Sr.] attempted to provide the opportunity for a closer-child relationship with [Respondent] who was to live with him, than that being enjoyed by his other child."

the language of Section 101 of the Copyright Act of 1976, that intent refutes Petitioners' after-death adoption argument.

Petitioners' "class gift" analysis is equally without merit. First, Respondent was originally not "adopted out" of the Williams family – she was adopted by her paternal grandmother, Lillian Stone. That adoption implemented Hank Williams, Sr. intent that Respondent be raised by his family. It was only after William's sister reneged on her promise to keep the child in the family that Respondent was placed for adoption. Nor does Petitioners' reliance upon the Restatement (Second) of Property support Petitioners' arguments. The Restatement section quoted contemplates circumstances, as here, where the language of the donor, here Hank Williams, Sr., clearly expresses an intent to benefit the child, whether or not adopted out. The support and custody agreement signed by Respondent's father clearly manifests such intent.

If accepted, Petitioners' argument would apply to legitimate as well as to illegitimate children since the distinction Petitioners make is not related to the child's birth, but rather to his/her adoption. Petitioners' argument is contrary to the intent they ascribe to Congress – to provide for the natural dependents of the deceased author. A hypothetical using Williams, Jr. proves the point. Ownership of the first renewal copyright did not vest until 1972. If Williams, Jr.'s mother had died and he had been adopted before then, according to Petitioners' argument, then Williams, Jr. also would not be a child under the 1976 Act. The same would be true for any child of a deceased author who is adopted before the renewal

copyright term vested. This would be an absurd, illogical and unjust result.

Petitioners' argument that Respondent should no longer be considered the "child" of her father because she was adopted after his death echoes the rejected argument Petitioners made when the widow of Hank Williams, Sr. sued to establish her co-ownership of the renewal copyrights. *Hill & Range Songs, Inc. v. Fred Rose Music, Inc.*, 403 F. Supp. 420 (M.D. Tenn. 1975), *aff'd*, 570 F.2d 554 (6th Cir. 1978). In that litigation, Petitioners argued that Billy Jean Berlin was not the "widow" of Hank Williams, Sr. for purposes of owning renewal copyrights, because after the death of Hank Williams, Sr., she remarried. This, like the argument made by Petitioners herein, simply ignores the fact that under the Copyright Act, the rights of widows and children to a share in the renewal copyrights vest indefeasibly upon the death of their spouse/father.

VI. CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be denied as this Court has denied on three prior occasions petitions for Writ of Certiorari in this and the related Alabama case.

Respectfully submitted,

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APPENDIX

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 92-6254

D.C. Docket No. 91-T-00742

RANDALL HANK WILLIAMS, JR.,

Plaintiff-Appellant,

versus

CATHY LOUISE DEUPREE ADKINSON, a/k/a CATHERINE YVONNE STONE and JETT WILLIAMS; HONORABLE EUGENE W. REESE, in his official capacity as Circuit Court Judge for Montgomery County, Alabama only,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Alabama

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(February 25, 1993)

Before FAY and BIRCH, Circuit Judges, and KAUFMAN,* Senior District Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1.

"Costs taxed against plaintiff-appellant."

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* Honorable Frank A. Kaufman, Senior U.S. District Judge for the District of Maryland, sitting by designation.

Judgment Entered: February 25, 1993
For the Court: Miguel J. Cortez, Clerk
By: Karleen McNabb
Deputy Clerk

ISSUED AS MANDATE: MAR 19 1993

Supreme Court, U.S.
FILED
MAY 11 1993
OFFICE OF THE CLERK

No. 92-1288

In The

Supreme Court of the United States

October Term, 1992

HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

REPLY BRIEF OF PETITIONERS

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I. QUESTION PRESENTED

1. WHETHER PETITIONERS' CLAIM THAT THEY HAVE BEEN DENIED DUE PROCESS OF LAW BECAUSE THE COURT OF APPEALS IMPROPERLY GAVE FULL FAITH AND CREDIT TO A CONSTITUTIONALLY INFIRM JUDGMENT OF THE ALABAMA SUPREME COURT AND FAILED TO CONDUCT AN INDEPENDENT INQUIRY INTO THE ADEQUACY OF THE ALABAMA JUDGMENT IS RENDERED MOOT BY AN ALLEGED SETTLEMENT OF THE ALABAMA PROCEEDINGS.

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No. 92-1288

In The

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October Term, 1992

HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

REPLY BRIEF OF PETITIONERS

Petitioners, other than Hank Williams, Jr., respectfully submit this Reply Brief in response to Respondent's Brief in Opposition to Petition for Writ of Certiorari. Petitioners herein address the entirely new issue of mootness raised by Respondent, and respectfully repeat their petition to this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, contained in its opinion

decided July 13, 1992, in the matter of *Cathy Yvonne Stone v. Hank Williams, Jr., et al.*, No. 91-7706.

III. REASONS FOR GRANTING THE WRIT

Petitioners filed their Petition for Writ of Certiorari on January 29, 1993. A comprehensive statement of the facts and procedural history of this case and collateral proceedings is contained in the Petition. Respondent, in her Brief in Opposition to Petition for Writ of Certiorari, first raises the issue of mootness, stating that Respondent and Petitioner Williams, Jr. settled the collateral Alabama action regarding the estate of Hank Williams, Sr. (Brief in Opp. at 3). The other Petitioners (1) are not parties to any such settlement, (2) have been refused information regarding the terms of such purported agreement by Respondent and Williams, Jr., and (3) have determined that the Alabama proceedings have not been dismissed. Respondent argues that this alleged settlement renders moot Petitioners' claim of denial of due process of law. For the reasons provided below, Respondent's argument has no merit and the Court should grant Petitioners' request for issuance of a writ of certiorari.

Petitioners have endeavored to restrict their Reply to issues of law and to the record of this case. However, for the record, Petitioners object to Respondent's seeking to improperly expand the record by allegations of a settlement of the Alabama proceedings, which allegations should be ignored in determining whether to grant Petitioners' request for the issuance of a writ of certiorari.

A. PETITIONERS' CLAIM OF DENIAL OF DUE PROCESS OF LAW HAS NOT BEEN RENDERED MOOT BY ANY ALABAMA SETTLEMENT.

1. Petitioners Other Than Williams, Jr. Are Not Parties to Any Settlement.

Petitioners' first reason for requesting that this Court grant their petition for certiorari is that Petitioners have been denied due process of law because the Court of Appeals improperly gave full faith and credit to a constitutionally infirm judgment of the Alabama Supreme Court, and failed to conduct an independent inquiry into the adequacy of the Alabama judgment. Respondent errs in claiming that this issue has been rendered moot by any settlement to which these Petitioners did not agree, and which took place in the context of collateral proceedings to which the majority of Petitioners were not parties. A settlement agreement cannot resolve issues among parties that were not parties to such settlement.

Except for Petitioner Williams, Jr., the Petitioners were not parties to any such Alabama settlement, nor have their interests been represented in such settlement. Neither Respondent nor Williams, Jr. will disclose the terms of such settlement to the other parties in this appeal or provide them with a copy of such purported agreement. Respondent and Williams, Jr. have enveloped this alleged final Alabama settlement in a shroud of secrecy which secrecy can only serve to further support Petitioners' claim of denial of due process by demonstrating the lack of representation by Williams, Jr. of these Petitioners' interests in the Alabama proceedings.

2. Even If Petitioners Are Bound by the Alabama Settlement Agreement, Respondent has Not Established That Such Settlement Settles Any Important Issues Raised by Petitioners.

Even if the alleged Alabama settlement agreement is somehow binding on these Petitioners, Respondent has completely failed to establish that such settlement does, in fact, render any of Petitioners' claims moot. A question is moot *only* if it presents no live controversy or if the parties lack cognizable interests in the outcome. *See, e.g., Powell v. McCormack,* 395 U.S. 486, 496 (1969). In addition, a settlement does not moot issues that the parties to the settlement did not intend to settle. *See Nixon v. Fitzgerald,* 457 U.S. 731, 743-44 (1982). Here, Respondent has failed to establish that there is no live controversy. *See County of Los Angeles v. Davis,* 440 U.S. 625, 631 (1979); *Northwest Envtl. Defense Center v. Gordon,* 849 F.2d 1241 (9th Cir. 1988) (burden of proving mootness is heavy). In fact, a live controversy exists regardless of any settlement. Respondent has not produced any settlement agreement, and as noted above, the Petitioners who are not parties to such agreement have not been able to discover its terms. Only upon inspection of such settlement agreement can it be determined whether it has any effect on this litigation. Respondent cannot rely upon vague assertions of the content of such settlement agreement in opposing the Petition for Writ of Certiorari, and thus has completely failed to establish that Petitioners' claims are moot in any manner whatsoever.

A settlement between Williams, Jr. and Respondent in the Alabama proceedings in no way affects these Petitioners' argument that the Court of Appeals improperly gave full faith and credit to the Alabama Supreme Court decision. Should this Court grant Petitioners' request and ultimately reverse the Court of Appeals, Petitioners would then have the opportunity to fully defend Respondent's claims on the merits.

IV. CONCLUSION

The Second Circuit's actions in this matter are in conflict with decisions of this Court and other circuits. The Second Circuit has engaged in conduct outside of the usual and accepted course of judicial proceedings. In addition, the Court of Appeals' opinion concerns vitally important questions of federal law which have not ever been, but should be, settled by this Court. Any settlement between Respondent and Williams, Jr. in the collateral Alabama proceedings does not moot any of Petitioners' claims. Petitioners respectfully request that this Court issue a writ of certiorari to review the judgment of the Second Circuit, dated July 13, 1992.

Respectfully submitted,

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